

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OTOMAS THOMAS, JR. v. THE

No. 21,275.

ARKANSAS SOUTHERN RAILWAY COMPANY AND T. J. SHAW, SHERIFF AND TAX COLLECTOR, PLAINTIFFS
IN ERROR.

LOUISIANA AND ARKANSAS RAILWAY COMPANY

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA

FILED JULY 27, 1902.

(21,275.)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 211.

ARKANSAS SOUTHERN RAILWAY COMPANY AND F. L.
SHAW, SHERIFF AND TAX COLLECTOR, PLAINTIFFS
IN ERROR,

vs.

LOUISIANA AND ARKANSAS RAILWAY COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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a UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

No. 16913.

F. L. SHAW, Sheriff and Tax Collector and ARKANSAS SOUTHERN RAILWAY COMPANY, Plaintiffs in Error,

versus

LOUISIANA AND ARKANSAS RAILWAY COMPANY, Defendants in Error.

Andrew A. Gunby, for Plaintiffs in Error.

H. H. White, and Henry Moore, for Defendants in Error.

Writ of Error to the Supreme Court of the State of Louisiana from the Supreme Court of the United States of America, Returnable at the City of Washington, D. C., Within Thirty Days (30) from the First Day of July, A. D. 1908.

Transcript of Record.

1 To the Honorable George Wear, Judge of the Fifth Judicial District, holding sessions of court in and for Winn Parish, in the State of Louisiana:

The petition of the Louisiana & Arkansas Railway Company, a corporation domiciled at Stamps, in the State of Arkansas, with Wm. Buchanan as President, having its Louisiana domicile at Spring Hill in Webster Parish, Louisiana, with Jas. F. Giles as Resident Agent for the State of Louisiana, duly appointed, with respect represents:

That the said corporation is duly and legally incorporated in the States of Louisiana and Arkansas and authorized to construct its line of road and do business in both of said states, and that it in the years 1901 and 1902 built and put in operation eight & 90/100 (8.90) miles of main track and two & 14/100 (2.14) miles of side track in Winn Parish, Louisiana, of which trackage 93/100 of a mile of main track and one & 55/100 mile of side track is located in the corporate limits of Winnfield in said Parish. And that said Railway Company has since built its line of railway through said Parish of Winn and now owns and operate- in said Winn Parish twenty-six & 55/100 miles of main track and two & 62/100 miles of side track, of which there is located in the corporate limits of the Town of Winnfield in said Parish 93/100 of a mile of main track and one & 55/100 mile of side track. That all of said lines of said railroad and side track and the depots and property of every kind of said Railway Company in said Winn Parish have been built and put in operation as an entirely new line of railway since the adoption of the Constitution of the State of Louisiana in the year 1898 and were all completed previous to the first day of January, 1904, and that under

and pursuant to the provisions of said Constitution of the State of Louisiana and Article 230 of same, all of said railway property
2 is exempt from taxes and from taxation in the State and in the Parish of Winn in Louisiana.

Your petitioner herein alleges that notwithstanding said exemption from taxes and the payment of taxes and of all taxation for the year 1903 and for full ten years from completion of said railway, the State Board of Appraisers has illegally certified to the assessor of Winn Parish, to be placed upon the assessment rolls of said Parish upon a supplemental roll for the year 1903, Eight & 90/100 miles of main track, including the value of depots and other buildings on the right of way, at \$5,000 per mile, amounting to \$44,500.00. and Two & 14/100 miles of side track at \$1250.00 per mile, amounting to \$2675.00, making a total of \$47,175.00, of which trackage there is in the corporate limits of the Town of Winnfield in said Parish 93/100 of a mile of main track and One & 55/100 mile of side track. And said State Board of Appraisers has illegally certified to said assessor to be placed upon the assessment rolls of said Parish of Winn for the years 1904, 1905 and 1906 twenty-six & 55/100 miles of main track, including the value of depots and other buildings on the right of way, at \$5,000.00 per mile, amounting to \$132,750.00 and Two & 62/100 miles of said track at \$1250.00 per mile, amounting to \$3275.00 aggregating the sum of \$136,025.00 of which trackage there is in the corporate limits of the town of Winnfield in said Parish 93/100 of a mile of main track and one & 55/100 mile of side track; said assessments for the years 1904 and 1905 to be placed upon supplemental rolls for said years.

Your petitioner herein further alleges that notwithstanding said exemption from taxes and the payment of taxes and of all taxation for the years 1903, 1904, 1905 and 1906 and for full ten years from the completion of said line of railway, the Assessor of said Parish of Winn has illegally and without warrant of law assessed and extended against the property of your petitioner for the year 1903 a
3 special railroad tax in favor of the Arkansas Southern Railroad of \$235.85. That said assessor of said Parish of Winn has illegally and without warrant of law assessed and extended against the property of your petitioner for the year 1904 a special railroad tax in favor of the Arkansas Southern Railroad of \$680.10.

That said assessor of said Parish of Winn has illegally and without warrant of law assessed and extended against the property of your petitioner for the year 1905 a special railroad tax in favor of Arkansas Southern Railroad of \$680.10.

That said assessor of said Parish of Winn has illegally and without warrant of law assessed and extended against the property of your petitioner for the year 1906 a special railroad tax in favor of Arkansas Southern Railroad of \$680.10.

That said assessment and extension of taxes is illegal and prejudicial to the rights of this petitioner, arbitrary and absolutely without warrant of law.

That under said illegal assessment and extension of taxes, F. L. Shaw, Sheriff and Tax Collector of your said Parish of Winn, had

proceeded to the collection of said illegal taxes and has advertised your petitioner as a delinquent tax payer and the property so illegally assessed as delinquent and has advertised same for sale to pay said illegal taxes and cost on March 23rd, 1907, as follows:

Tax Sale of Immovable Property, State of Louisiana, Versus Delinquent Tax Debtors, Parish of Winn, Fifth Judicial District.

STATE OF LOUISIANA,
Parish of Winn:

4 By virtue of the authority vested in me by the Constitution and laws of the State of Louisiana, I will sell at the principal north front door of the Court house, in the town of Winnfield, Winn Parish, La., in which the Civil District Court is held, within the legal hours for judicial sales, beginning at 11 o'clock A. M. on

Saturday, March 23rd, 1907,

and continuing on each succeeding day until said sales are completed, all immovable property on which taxes are now due to the State of Louisiana, Parish of Winn, Arkansas Southern Railroad and District Schools to enforce collection of taxes assessed in the years 1903, 1904, 1905 and 1906, together with interest thereon from the 31st day of December, 1903, at the rate of 2 per cent per month until paid, and all costs. The names of said delinquent tax payers, the amount of taxes due by each on the assessment of 1903, 1904, 1905 and 1906, and the immovable property to be offered for sale are as follows to-wit:

Louisiana and Arkansas Railroad Co., Hy. Moore, Attorney, Texarkana, Ark., Special school railroad tax for 1903, on 8.90 miles of main track, including value of depot and other buildings on right of way; 2.14 miles of side track.

Special school tax, Winnfield.....	\$125.00
“ “ “ Shady Grove	135.00
Arkansas Southern tax.....	235.85

Interest and cost to be added.

Louisiana and Arkansas Railroad Co., Hy. Moore, Attorney, Texarkana, Ark. Special school and special railroad tax for 1904, on 26.55 miles of main track, including value of depots and other buildings on right of way; 2.62 miles of sidetrack.

Special school tax Shady Grove Dist.....	\$135.00
“ “ “ Winnfield Dist.	210.00
Arkansas Southern tax.....	680.10

Interest and cost to be added.

- Louisiana and Arkansas Railroad Co., Hy. Moore, Attorney, Tex-
arkana, Ark. Special school and special railroad tax for 1905,
5 on 26.55 miles of main track, including value of depots and
other buildings on right of way; 2.62 miles of sidetrack.

Special school tax ward 9.....	\$50.00
“ “ “ Corinth	100.00
“ “ “ Calvin	25.00
“ “ “ Winnfield	420.00
Arkansas Southern tax.....	680.10

Interest and cost to be added.

Louisiana and Arkansas Railroad Co., Hy. Moore, Attorney, Tex-
arkana, Ark. Special school and special railroad tax for 1906, on
26.55 miles of main track, including value of depots and other build-
ings on right of way, valued at \$5,000 per mile; 2.62 miles of side-
track, valued at \$1,250 per mile.

Arkansas Southern Railroad tax.....	\$680.00
Special School tax ward 9 west.....	50.00
“ “ “ Corinth	100.00
“ “ “ Winnfield	420.00
“ “ “ Shady Grove Dist.....	137.35
“ “ “ Calvin	25.00

Interest and cost to be added.

Louisiana Railway and Navigation Co., C. Ellerbe, assistant to
president. Special railroad tax for 1903, on 4.76 miles of main track,
including value of depot on right of way; .44 miles of sidetrack.

Railroad tax	\$121.75
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Interest and cost to be added.

Louisiana Railway and Navigation Co., C. Ellerbe, assistant to
president. Special railroad tax for 1904, on 4.76 miles of main
track, including value of depots and other buildings on right of way;
.44 miles of *said* track; 17.46 miles on main track, Winnfield branch,
including value of depots and other buildings on right of way; .36
miles of sidetrack.

Railroad tax	\$341.10
--------------------	----------

Interest and cost to be added.

- Louisiana Railway and Navigation Co., C. Ellerbe, assist-
6 ant to president. Special railroad tax for 1905, on 4.76 miles
of main track, including value of depots and other buildings
on right of way; .44 miles of sidetrack; 17.46 miles of main track,
Winnfield branch, including the value of depot and other buildings
on right of way; .36 miles sidetrack.

Railroad tax	\$341.10
--------------------	----------

Interest and cost to be added.

Louisiana Railway and Navigation Co., C. Ellerbe, assistant to president. Special railroad tax for 1906, on 4.76 miles of main track, including value of depot and other buildings on right of way, valued at \$5,000 per mile; .44 miles sidetrack, valued at \$1,250 per mile, Winnfield branch; 17.46 miles of main track, including value of depot and other buildings on right of way, valued at \$2,500 per mile; .36 miles of sidetrack, valued at \$625 per mile.

Railroad tax \$341.13

Interest and cost to be added.

On said day of sale I will sell such portions of said property as each debtor will point out, and in case the debtor will not point out sufficient property, will at once and without further delay sell the least quantity of said property of any debtor which any bidder will buy for the amount of the taxes, interest and cost due by said debtor. The sale will be without appraisement, for cash, in legal tender money of the United States, and the property sold shall be redeemable at any time for the space of one year by paying the price given with twenty per cent and costs and penalty added.

F. L. SHAW,

*Sheriff and ex-Officio Tax Collector,
Parish of Winn, Louisiana.*

Feb. 15, 1907.

Notice to Mortgage Creditors.

STATE OF LOUISIANA,
Parish of Winn:

Office of Sheriff and ex-Officio Tax Collector, Parish of Winn, La.,
Feb. 15, 1907.

7 In conformity with Act 85 of 1888, notice is hereby given to all persons holding mortgages upon real estate in the parish of Winn, on which taxes for the year 1906 have not been paid, that I will begin the sale of the same at north front door of the Court-house on March 23rd, 1907, and that a number of pieces of property so delinquent, are now being advertised in this newspaper in conformity with the law, preparatory to such sale. The attention of mortgage creditors is especially called to these advertisements of tax sales, and they are warned to take such steps prior to the sale as may be necessary to protect their rights.

F. L. SHAW,

*Sheriff and ex-Officio Tax Collector,
Parish of Winn, Louisiana.*

Feb. 15, 1907.

Your petitioner alleges, that the said assessment and extension of taxes and all assessments and extension for taxes against the railroad property of petitioner in said Parish of Winn is illegal and

without warranty of law; that all said corporation property consists of railroad property proper and is not subject to the payment of the above mentioned and alleged taxes, nor any taxes, and the attempt to sell any of said property for said alleged taxes and for any taxes is unconstitutional and illegal and is an attempt to deprive your petitioner of the said property and force collection of the alleged taxes wrongfully, and deprive your petitioner of the benefit of its legal and constitutional exemption from taxation under the laws of the State of Louisiana.

Petitioner avers that these acts are violative of the provisions of both the Constitution of the United States and of the Constitution of the State of Louisiana.

That the attempt at sell said property and so deprive your petitioner of its property is in contravention of Art. 2 and Art. 230 of the Constitution of the State of Louisiana adopted in the year 8 1898, and such attempt to so deprive your petitioner of its property is in contravention of, and opposed to Sec. 1 of Article XIV of the amendments to the Constitution of the United States, as such attempt, if carried out, would deprive your petitioner of its property without due process of law, and will work irreparable injury to your petitioner.

Your petitioner alleges, that in order to prevent the illegal sale of its said property and the illegal enforced payment of the illegal taxes aforesaid under the improper and illegal assessment and extension of taxes as alleged, the suit of injunction is necessary and it therefore moves and prays for Writ of Injunction to be ordered issued according to law and that F. L. Shaw, Sheriff and Tax Collector of Winn Parish, and all of his deputies and agents be enjoined from proceeding with the sale of said property, or any portion thereof, or any property of your petitioner for said alleged taxes and from collecting, or attempting to collect, any of said alleged taxes, out of the sale, or otherwise, from the property of your petitioner.

Wherefore, your petitioner moves and prays for citation and summons on F. L. Shaw, Sheriff and Tax Collector, and on J. T. Durham Assessor, and on J. M. Webb President of the Police Jury of Winn Parish for said Parish and its Police Jury, and on the Arkansas Southern Railroad Company by service on its accredited agent, and that a final hearing be had for judgment against all of said defendants, annulling and setting aside said alleged illegal assessment and extension of taxes and decreeing your petitioner entitled to legal exemption from the taxes alleged and from all taxes and all cost.

That a writ of Injunction against F. L. Shaw, Sheriff and Tax Collector, and his successors, be sustained and the stopping of the sale of said property as above mentioned and alleged, by injunction, be sustained and the alleged and threatened sale be 9 forever enjoined and prohibited and made perpetual as to the acts complained of in this suit.

Petitioner further prays for all necessary orders and for its costs and for general relief.

H. H. WHITE AND
HENRY MOORE,

Att'y's for the La. & Ark. Ry. Co.

STATE OF LOUISIANA,

Parish of Winn:

Wm. Buchanan states that he is the President of Plaintiff Railway Co. and that to the best of his knowledge and belief the facts and allegations in the above petition are true.

WM. BUCHANAN.

Subscribed and sworn to before me this 27th day of February 1907. Witness my hand and official seal as Notary Public in and for Miller County Arkansas.

[SEAL.]

A. H. WHITMARSH,
Notary Public, Miller County, Ark.

My Commission expires, May 15, 1907.

Order.

By reason of the law and of the above petition and affidavit, it is ordered that the Writ of Injunction be issued and served according to law upon the plaintiff's giving bond as required by law in the sum of Seven Hundred \$700 Dollars, conditioned according to law.

Done and officially signed this 1st day of Mar. 1907.

GEO. WEAR,
Judge of the 5th Judicial District of Louisiana.

I accept service of petitioner and writ of Injunction in this cause and take notice of same and waive citation.

Given this 11th day of March, 1907.

F. L. SHAW,
Sheriff & Tax Collector of Winn Parish.

10 Service of the within petition is hereby acknowledged and citation and service waived. All legal rights and defenses reserved.

Done this 14th day of M'ch, 1907.

J. T. DURHAM,
Assessor of Winn Parish, La.

Endorsed: No. 2075. Louisiana & Arkansas Railway Company vs. F. L. Shaw, Sheriff and Tax Collector, Arkansas Southern Railroad Company et al. Filed M'ch 7th 1907. P. K. Abel, Cl'k 5th D. C.

STATE OF LOUISIANA,
Parish of Winn:

Fifth District Court.

No. 2075.

LOUISIANA AND ARKANSAS RAILWAY COMPANY

vs.

F. L. SHAW, Sheriff and Tax Collector; ARKANSAS SOUTHERN RAIL-
 ROAD COMPANY et als.

To Arkansas Southern Railroad Company, of the Parish of Winn,
 La.:

You are hereby cited to appear in the office of the Clerk of the said Court, in the town of Winnfield, La., of the parish aforesaid, and comply with the demand contained in the petition, of which a copy accompanies the citation, or deliver your answer thereto in writing in said office in ten days after the service hereof, with one additional day for every ten miles between your residence and the office of the said clerk.

Witness the Honorable Geo. Wear, Judge of said Court, this the 12th day of March, A. D., 1907.

[SEAL.]

P. K. ABEL,
Clerk Fifth District Court.

Endorsed: "Return. Received this citation, together with
 11 a certified copy of the same, and a certified copy of the original petition, in office on the 15th day of March, A. D., 1907, and on the 15th day of March A. D., 1907, I made personal service of Citation and petition, by delivering the said certified copies to J. C. Nolan Superintendent for the Arkansas Southern Railway Company in the office of said Company at Ruston, Lincoln Parish, Louisiana, defendant in person, in the parish of Lincoln, La., at — about — miles from the Court House.

Sheriff's Fees.

Service of petition and Citation.....	1.00
Mileage — at 7c a mile.....
Total

L. C. GAHAGAN,
Sheriff Lincoln Parish, La.

STATE OF LOUISIANA,
Parish of Winn:

Fifth District Court.

No. 2075.

LOUISIANA AND ARKANSAS RAILWAY COMPANY

vs.

F. L. SHAW, Sheriff and Tax Collector; ARKANSAS SOUTHERN RAIL-
ROAD COMPANY et als.

To J. M. Webb, President of the Police Jury of the Parish of Winn,
La.:

You are hereby cited to appear in the office of the Clerk of the said Court, in the town of Winnfield, La., of the parish aforesaid, and comply with the demand contained in the petition, of which a copy accompanies the citation, or deliver your answer thereto in writing in said office in ten days after the service hereof, with one additional day for every ten miles between your residence and the office of the said clerk.

Witness the Honorable Geo. Wear, Judge of said Court, this the
14th day of March, A. D., 1907.

12 [SEAL.]

P. K. ABEL,
Clerk Fifth District Court.

Endorsed: "Returned. Received this citation, together with a certified copy of the same, and a certified copy of the original petition, in office on the 15th day of March, A. D., 1907, and on the 15 day of March A. D. 1907, I made personal domiciled service of Citation and petition, by delivering the said certified copies to J. M. Webb in person a sane person apparently over the age of fourteen years, defendant in person, in the Parish of Winn, La., at Atlanta, La., about 12 miles from the Court House.

Sheriff's Fees.

Service of Petition and Citation.....	1.00
" " Injunction	2.00
Mileage 25 at 7c a mile.....	1.75
Total	4.75

F. P. MADDEN,
Dy. Sheriff, Winn Parish, La.

In the District Court of Winn Parish, Fifth Judicial District, State of Louisiana.

LOUISIANA & ARKANSAS RAILWAY COMPANY, Plaintiff,
vs.

F. L. SHAW, Sheriff & Tax Collector; J. T. DURHAM, Assessor; J. M. Webb, President of Police Jury; Arkansas Southern Railroad Company, Defendants.

Injunction Bond.

The Louisiana & Arkansas Railway Company, having applied for and obtained from the Honorable Judge of the Fifth Judicial District of the State of Louisiana, holding court in and for Winn Parish, Louisiana, an order for a Writ of Injunction to issue in the above styled cause, upon the plaintiff's giving bond as required by law, in the sum of Seven Hundred Dollars, conditioned according to law;

13 Now therefore, the Louisiana & Arkansas Railway Company, as principal, and R. L. Tannehill and ———, as sureties, undertake and bind ourselves that we will pay to the defendant above named, and to said Parish of Winn, and to the Police Jury thereof, all damages which they, or either of them, may sustain by reason of the injunction in this action to the amount of Seven Hundred Dollars, if it is finally decided that said injunction was wrongfully obtained and said injunction should be dissolved.

LOUISIANA & ARKANSAS RAILWAY
COMPANY,

By WM. BUCHANAN, *President*.
R. L. TANNEHILL.

Attest:

S. M. ABEL.
FRANK CRAIG.

Endorsed: Injunction Bond. Filed Meh. 7th 1907. P. K. Abel,
Cl'k & Rec.

In Fifth District Court, Winn Parish, Louisiana.

No. 2075.

LOUISIANA & ARKANSAS RY. CO.

vs.

F. L. SHAW, Sheriff & Tax Collector; ARKANSAS SOUTHERN R. R.
Co. et als.

Now comes Defendants and for answer to the petition in the above entitled and numbered suit deny each and every allegation therein contained except what may be hereinafter admitted;

It is admitted that the property described in Plaintiffs' petition was legally assessed by the State Board of Appraisers of the State of Louisiana, which is specially authorized to assess railroad property by the constitution and laws of the State of Louisiana and that under said assessment and valuation by the state Board the assessor of Winn Parish placed said property on the assessment Roll and extended against it a special tax of five mills on the Dollar voted

14 in favor of the Arkansas Southern Railroad Company by the Tax-payers of Winn Parish as alleged in Plaintiffs' petition; it is further admitted that Plaintiff refused to pay said special taxes after due notice and demand and that the tax collector advertised said property for sale on the 23rd of March, 1907, to enforce the collection of said special taxes according to law, when he was restrained by the injunction issued herein. Respondents aver that said special taxes are not such "taxation" as referred to in Article 230 of the Constitution of Louisiana adopted in 1898, but the so called special taxes are a voluntary local assessment or contribution voluntarily levied upon themselves by the tax payers of Winn Parish, not for governmental purposes but in aid of a public improvement for the common benefit and advantage of the said tax payers, and that the Constitution does not exempt nor intend to exempt new railroads from the payment of such local assessments or contributions.

Aver that at a special election held on the First day of February, 1898, under the constitution and laws of Louisiana as they then existed the property tax payers of Winn Parish voted a five mill special tax per annum for ten years from the completion of the Arkansas Southern Railroad to Winnfield and that this special election in favor of levying said contribution on all the taxable property within the Parish of Winn was promulgated and published to the world on the Seventh day of February, 1898, long before the adoption of the Constitution of 1898 which did not and could not affect, impair, or destroy the contract previously entered into between respondent, the railroad company and the tax payers of Winn Parish. That the provisions of the Constitution of 1898 exempting new railroads from taxation did not apply to voluntary assessments or contributions levied by a body of taxpayers in aid of railroad enterprises or other public improvements and that said constitution

15 tion could not apply to such taxes already voted and levied without being in contravention of the Constitution of the United States providing that no State shall pass any ex post facto law or law impairing the obligation of contracts. Art. 1, Sec. 10.

Aver that the taxpayers had the right to make said contract and the validity and legality of said contract and said tax, and defendants' right to collect the same were maintained by the District Court of Winn Parish and the Supreme Court of Louisiana in the suit of C. James et als. vs. Arkansas Southern R. R. Company et als. Aver that said Arkansas Southern Railroad was built and completed according to the requirements of said contract which became fixed and irrevocable on or about the First of April 1901 and binding on all the property situated in Winn Parish, taxable at the time the

said special election was held, which was long before plaintiffs' right of way through Winn Parish was secured or their railroad was constructed; that plaintiff took said road cumonere and is estopped from claiming exemption from said tax in aid of the Arkansas Southern Railroad Company which has been of benefit and advantage to all the property holders and to all kinds of business in said Parish, said railroad having been the first railroad built into the said Parish. Defendant, the Arkansas Southern Railroad Company pleads that its vested right to said special taxes cannot be divested and if Art. 230 of the Constitution of Louisiana is construed to have intended to exempt a new railroad built into the Parish of Winn from the payment of said special taxes, the said exemption is unconstitutional, null and void.

And now assuming the attitude of Plaintiff in reconvention Defendant, the Arkansas Southern Railroad Company avers that the Injunction sued out herein was wrongful and improvident and has damaged the Defendant in delay, expense, and attorney's fees in the full sum of One Thousand Dollars.

16 Wherefore, the premises considered respondents pray that Plaintiff's demand be rejected and its injunction be dissolved, and that the sheriff and Tax Collector be ordered to proceed with the collection of the taxes enjoined, according to law. The Arkansas Railroad Company made defendant herein further prays for judgment in reconvention for the sum of One Thousand Dollars and that Plaintiff be compelled to pay all costs including the cost of advertising said property for tax sale. Defendants further pray for general relief.

A. A. GRUNDY,
Attorney for Defendants.

Endorsed: No. 2075. L. & A. Ry. Co. vs. F. L. Shaw Sheriff & Tax Collector et als. Answer and Reconventional Demand. Filed 3/25 1907. P. K. Abel, Clk. 5th D. C.

DEAR SIR: I am instructed by the State Board of Appraisers to forward you the following assessment with the request that you place same on the assessment rolls of your parish for the year 1903, making supplemental rolls therefor as required by law.

Your careful attention will oblige,

Yours truly,

W. N. McFARLAND, *Secretary.*

Louisiana & Arkansas Railway Company, Henry Moore, Attorney,
Texarkana, Ark.

8.90 miles of main track, including the value of depots and other buildings on the right of way, at \$5,000 per mile.....	\$44,500.00
2.14 miles of side track at \$1,250 per mile.....	2,675.00
Making a total of.....	\$ 47,175.00

The above trackage is subdivided as follows:

	Main track.	Side track.
17		
In the corporation limits of Winnfield.....	0.93	1.55
In the Parish outside of Winnfield.....	7.97	0.59
	<hr/>	<hr/>
Making a total of.....	8.90	2.14

Please note carefully:

The evidence submitted to the State Board of Appraisers shows that the railroad above assessed is exempt from regular State, Parish and Municipal taxation.

You will, therefore, place the assessment on your assessment rolls and charge it only with such special taxes and forced contributions as may be due in the locality through which the road runs.

To the Assessor of Winn Parish.

DEAR SIR: I am instructed by the State Board of Appraisers to forward you the following assessment with the request that you place same on the assessment rolls of your parish for the year 1904, making supplemental rolls therefor as required by law.

Your careful attention will oblige,

Yours truly,

W. N. McFARLAND, *Secretary.*

Louisiana & Arkansas Railway Company, Henry Moore, Attorney, Texarkana, Ark.

26.55 miles of main track, including the value of depots and other buildings on the right of way, at \$5,000 per mile.....	\$132,750.00
2.62 miles of side track at \$1,250 per mile.....	3,275.00
	<hr/>
Making a total of.....	\$136,025.00

The above trackage is subdivided as follows.

	Main track.	Side track.
18		
In the corporate limits of Winnfield....	0.93	1.55
In the Parish outside of Winnfield....	25.62	1.07
	<hr/>	<hr/>
Making a total of.....	26.55	2.62

Please Note Carefully:

The evidence submitted to the State Board of Appraisers shows that the railroad above assessed is exempt from regular State, Parish and Municipal taxation.

You will, therefore, place the assessment on your assessment rolls and charge it only with such special taxes and forced contributions as may be due in the locality through which the roads runs.

To the Assessor of Winn Parish.

DEAR SIR: I am instructed by the State Board of Appraisers to forward you the following assessment with the request that you place same on the assessment rolls of your parish for the year 1905, making supplemental rolls therefore as required by law.

Your careful attention will oblige.

Yours truly,

W. N. McFARLAND, *Secretary.*

Louisiana & Arkansas Railway Company, Henry Moore, Attorney,
Texarkana, Ark.

26.55 miles of main track, including the value of depots and other buildings on the right of way, at \$5,000 per mile.....	\$132,750.00
2.62 miles of side track at \$1,250 per mile.....	3,275.00
Making a total of.....	\$137,025.00

The above trackage is subdivided as follows:

	Main track.	Side track.
In the corporate limits of Winnfield.....	0.93	1.55
In the Parish outside of Winnfield.....	26.62	1.07
Making a total of.....	26.55	2.62

19 Please note Carefully:

The Evidence submitted to the State Board of Appraisers shows that the railroad above assessed is exempt from regular State, Parish and Municipal taxation.

You will, therefore, place the assessment on your assessment rolls and charge it only with such special taxes and forced contributions as may be due in the locality through which the road runs.

To the Assessor of Winn Parish.

DEAR SIR: I am instructed by the State Board of Appraisers to forward you the following assessment with the request that you place same on the assessment rolls of your parish for the year 1906.

Your careful attention will oblige.

Yours truly,

W. N. McFARLAND, *Secretary.*

Louisiana & Arkansas Railway Company, Henry Moore, Attorney,
Texarakana, Ark.

26.55 miles of main track, including the value of depots and other buildings on the right of way, at \$5,000 per mile.....	\$132,750.00
2.62 miles of side track at \$1,250 per mile.....	3,275.00
Making a total of.....	\$136,025.00

The above trackage is divided as follows.

	Main track.	Side track.
In the corporate limits of Winnfield.....	0.93	1.55
In the Parish outside of Winnfield.....	25.62	1.07
	<hr/>	<hr/>
Making a total of.....	26.55	2.62

Please Note Carefully:

20 The evidence submitted to the State Board of Appraisers shows that the railroad above assessed is exempt from regular State, Parish and Municipal taxation.

You will, therefore, place the assessment on your assessment rolls and charge it only with such special taxes and forced contributions as may be due in the locality through which the road runs.

To the Assessor of Winn Parish.

Endorsed: Filed in evidence 6/11/07. P. K. Abel, Cl'k 5th D. C. 2075. L. & A. Ry. Co. — Shaw, Sheriff, et als. Statement of Fact Introduced and Agreed to by Counsel Both Sides and the Assessment and Appraisement of Property Belonging to the L. & A. Ry. Co. in Winn Parish, Louisiana, for Special Taxes and Forced Contributions Only for the Years 1906, 1905, 1904, and 1903, Together with Certificate of Secretary State Board of Appraisers.

Evidence closed.

Endorsed: Note of Evidence. Filed 6/11/07. P. A. Abel, Cl'k 5th D. C.

In Winn Parish District Court.

No. 2075.

L. & A. RAILWAY Co.

vs.

F. L. SHAW, Sh'ff & Tax Collector, et al.

Agreed Statement of Facts.

1. The petitioner, the Louisiana & Arkansas Railway Company is a duly organized and chartered Railroad in the State of Louisiana.

2. Its line of Railroad was commenced built and constructed through Winn Parish during the years 1901, 1902 and 1903—after the adoption of the Constitution of Louisiana of 1898 and prior to the 1st day of January 1904.

21 3. The State Board of Appraisers in 1906 assessed the property in question, the sale of which is enjoined in this suit, for the years 1903, 1904, 1905 and 1906 and certified the same

to the assessor of Winn Parish, who has extended the same upon his rolls and the taxes thereon, as is set out in Plaintiffs' petition.

4. The tax collector of Winn Parish had advertised, and was proceeding to make sale of the property of said Railway Company to enforce the payment of said taxes, as alleged in plaintiffs' petition. wherein this suit was filed and the Injunction herein obtained.

5. The Alexandria, Junction City & Shreveport Railway Co. and the Arkansas Southern Railroad Co. were duly chartered and incorporated Railroads in the State of Louisiana, and said companies were duly consolidated under the laws of Louisiana, and the Articles of Consolidation were duly filed with the Secretary of State.

6. A tax of five mills to run for a term of ten years from the completion of the road, was voted by a majority of the taxpayers in number and amount of Winn Parish in favor of the Alexandria, Junction City & Shreveport Railway Co. at an election held in Winn Parish on the 1st day of February 1898, conditioned upon the completion of said Railroad into Winnfield within three years from that date, and said election was duly promulgated by the Police Jury of said Parish on the 7th day of February 1898, and the Arkansas & Southern Railroad has succeeded to all the rights of said Alexandria, Junction City & Shreveport Railway Co. in and to said tax.

7. The Arkansas Southern Railroad Company duly filed its waiver of exemption of taxes on the 5th day of November 1898 and same is duly recorded in Conveyance Book E. pp. 446 & 447.

8. By proceedings and judgment of the Police Jury of Winn Parish the Arkansas Southern Railroad Co. was given an extension of time to the 1st day of May 1901 to complete its line of Railroad into Winnfield, and same was on or before said last mentioned date so completed, and was accepted by the Police Jury, and the taxes levied in accordance with said special election beginning with the year 1901, and such taxes have been paid by the property holders of Winn Parish.

9. The Right of way and grounds for deposits and switches in Winn Parish was acquired by the plaintiff subsequent to the voting of the tax in question and since the completion of the Arkansas Southern Railroad to Winnfield.

10. It is admitted that if the defendants are entitled to attorneys' fees in case the Injunction herein is dissolved the sum of five hundred dollars would be a reasonable fee in the premises.

HENRY MOORE,

Att'y for Petitioner.

A. A. GRUNDY,

Att'y for Defendants.

Endorsed: L. & A. Ry. Co. vs. #2075 F. L. Shaw Sh'ff. et als.,
Statement of Facts Filed June 11th, 1907. P. K. Abel, Cl'k 5th
D. C.

Fifth District Court, Parish of Winn, State of Louisiana.

L. & A. RAILWAY Co.

vs.

F. L. SHAW, Sheriff and Tax Collector, and the ARKANSAS SOUTHERN RAILROAD COMPANY.

This is a suit by injunction to prevent the sale of the roadbed and side tracks of the Plaintiff Company in the Parish of Winn for the nonpayment of a special five mills tax for the years of 1903, 1904, 1905 and 1906, in favor of the Arkansas Southern Railroad, from which tax plaintiff claims its said property to be exempt by reason of the provisions of Article 230 of the Constitution of 1898. The answer of the Defendant Company to the demands of plaintiff is that such special taxes are a voluntary local assessment and that the constitution does not exempt nor intend to exempt new railroads from the payment of such local assessment or contribution; and further that by reason of the fact that the special tax in question was voted and promulgated previous to the adoption of the constitution of 1898, it has a vested right to the said tax which can not be divested, and if the article of the constitution (230) referred to is construed to have intended to exempt a new railroad from the payment of such special tax, the said exemption is unconstitutional — null.

These are the issues involved in this litigation. It appears that the tax in question was voted under the authority of given by Act 35 of 1886, for the purpose of levying special taxes in aid of railway enterprises, etc.: section 6 of said act providing that the plover jury of any parish shall when the vote is in favor of the levy of such tax, levy and collect annually, in addition to other taxes, a tax at the rate voted, upon all taxable property within the limits of such parish.

Plaintiff contends with seriousness and force that the tax voted in aid of the Defendant Company is a special tax and not a local assessment, and that it therefore comes clearly within the provisions of article 230 of the Constitution of 1898. There can be no question that the tax voted is a special tax, the law under which it was voted designates it a special tax, though its application, effect and purpose is local, being limited to the Parish of Winn.

It becomes necessary to ascertain the difference between a local assessment on property and a special tax voted in aid of a railroad.

A local assessment is levied upon property on the theory that there are reciprocal obligations and mutual benefits received, and may be levied upon property without the consent of the owner.

What reason or motive prompted the people of the parish of Winn to vote upon their property the special tax of five mills for ten years: Manifestly the benefits which they expected to receive and have received by the construction of the said railroad, which construction they had every reason to believe would enhance the value of their property and give them other advantages which they did not enjoy at the date of the voting of the said tax.

Practically there is or seems to be but little difference whether the special tax voted in aid of the Defendant Railroad is a local assessment or a special tax; courts have regard for what a thing is rather than for what it may be called. The court is further of the opinion that article 230 of the Constitution of 1898 has reference to, and was intended to apply to general taxation which goes to the support and maintenance of the State and parish governments.

As to the question of that article 230 of the constitution being null and void by reason of the special tax having been voted and promulgated before the adoption of that article of the constitution of 1898, the court is of the opinion that the obligation of a contract can no more be impaired by constitutional provision than by legislative enactment.

As to the question of damages for att'ys' fees, the questions involved being new, at least to this court and of such character as may superinduce an honest difference of opinion, the court concludes that there has been no abuse of the equitable remedy of injunction, and therefore no damages will be allowed.

For the reasons assigned, it is therefore ordered, adjudged and decreed that the writ of injunction herein sued out by plaintiff be dissolved and set aside without damages, and that there be judgment in favor of the defendant Company decreeing it to be entitled to 25 the special tax of five mills levied upon the property of Plaintiff Company in the Parish of Winn for the years 1903, 1904, 1905 and 1906, and that the Sheriff and ex-officio tax collector in and for the Parish of Winn proceed to the collection thereof. It is further ordered that the plaintiff pay all cost of this suit.

Done, read and signed in open court on this the 22 day of Oct., 1907.

GEO. WEAR,
Judge Fifth District.

Endorsed: L. & A. Ry. Co vs. F. L. Shaw, Sheriff et als. No. 2075.
Opinion. Filed 10/22/07. P. K. Abel, C. D. C.

Fifth Jud. Dist. Court, Winn Parish, Louisiana.

L. & A. RAILWAY CO.

VS.

F. L. SHAW, Sh'ff, & T. C. & ARKANSAS SOUTHERN R. R. Co.

In this cause now comes the plaintiff & moves that a new trial be granted on the ground that the Judgment rendered herein is contrary to the law and the evidence.

HENRY MOORE,
WHITE & THORNTON & HOLLOMAN,
Att'ys for Pl'ff.

Endorsed: L. & A. Ry. Co. vs. F. L. Shaw, She'ff, et als. #2075.
Motion for New Trial. Filed Oct. 22, 1907, P. K. Abel, C. D. C.

In Fifth District Court, Parish of Winn, State of Louisiana.

L. & A. RAILWAY Co.

vs.

F. L. SHAW, Sheriff, & T. C. & ARKANSAS SOUTHERN R. R. Co.

In this cause by reason of the law and the evidence being in favor thereof, It is hereby ordered, adjudged and decreed that there be judgment in favor of the defendants F. L. Shaw Sheriff and Tax Collector and the Arkansas Southern Railroad Company dissolving and setting aside the writ of injunction sued out herein and
26 decreeing that the defendant Arkansas Southern Railroad Company to be entitled to the special tax of Five Mills levied upon the property of the Plaintiff Company in the Parish of Winn for the years 1903, 1904, 1905 and 1906, and that the Sheriff and Ex-Officio Tax-Collector in and for the Parish of Winn be and he is hereby ordered to proceed to the collection thereof.

It is further ordered, that the demand of the defendants for damages be rejected. It is further ordered that the plaintiff pay all costs of this suit.

Thus done, read and signed in open court on this the 22nd day of October, A. D. 1907.

GEO. WEAR,
Judge Fifth Dist. of La.

Endorsed: No. 2075. L. & A. Ry. Co. vs F. L. Shaw, Sh'ff, et als.
Judgment. Filed Oct. 22nd, 1907. P. K. Abel, C. D. C.

Appeal Bond.

State of Louisiana, Parish of Winn, Fifth Judicial District Court.

No. 2075.

LOUISIANA & ARKANSAS RAILWAY COMPANY

vs.

F. L. SHAW, Sheriff & Tax Collector, and ARKANSAS SOUTHERN RAILROAD COMPANY.

Know all men by these presents, That we, the Louisiana & Arkansas Railway Company, and Henry Moore and R. L. Tannehill as security, acknowledge ourselves to be indebted unto P. K. Abel, Clerk of the Fifth Judicial District Court in and for the aforesaid Parish and State, in the full sum of Two Hundred Dollars (\$200.00) for the payment of which sum, well and truly to be made, we bind ourselves in solido, firmly by these presents.

Dated at Winnfield, La., this the 31 day of October, 1907.

27 The condition of the above obligation is such, that whereas, the above bounded Louisiana & Arkansas Railway Company has this day taken a devolutive appeal from a final judgment ren-

dered against it in the suit entitled Louisiana & Arkansas Railway Company vs. F. L. Shaw, Sheriff and Tax Collector, and Arkansas Southern Railroad Company, No. 2075, on the Docket of the District Court of the Parish and State aforesaid, said judgment signed on the 22nd day of October, A. D. 1905 and said appeal made returnable to the Honorable, the Supreme Court of Louisiana at New Orleans, Louisiana, on the third Monday of December, A. D. 1907.

Now, therefore, if the above bounded Louisiana & Arkansas Railway Company shall prosecute its appeal and shall satisfy whatever judgment may be rendered against it, or that the same shall be satisfied by the proceeds of the sale of its property, real and personal, if it be cast in said appeal, otherwise that said security shall be liable in its stead then, and in such case, the above obligation to be null and void, otherwise to be and remain in full force and virtue in law.

LOUISIANA & ARKANSAS RAILWAY CO.,
By HENRY MOORE, *Gen. Att'y.*
HENRY MOORE.
R. L. TANNEHILL.

Filed in District Court this 31st day of October, 1907.

S. M. ABEL, *D'y Clerk.*

Endorsed: L. & A. Ry. Co. vs. F. L. Shaw, Sheriff, & T. C. and Arkansas Southern R. R. Co. Bond. Filed Oct. 31, 1907. S. M. Abel, D'y C. D. C.

Appeal Bond.

State of Louisiana, Parish of Winn, Fifth Judicial District Court.

28

No. 2075.

LOUISIANA & ARKANSAS RAILWAY COMPANY

vs.

F. L. SHAW, Sheriff & Tax Collector, and ARKANSAS SOUTHERN RAILROAD COMPANY.

Know all men by these presents, That we, the Louisiana & Arkansas Railway Company and Henry Moore and R. L. Tannehill as security, acknowledge ourselves to be indebted unto P. K. Abel, Clerk of the Fifth Judicial District Court in and for the aforesaid Parish and State, in the full sum of Five Hundred Dollars (\$500.00), for the payment of which sum, well and truly to be made, we bind ourselves in solido firmly by these presents.

Dated at Winnfield, Louisiana, this the 31 day of October, 1907.

The condition of the above obligation is such, that whereas, the above bounded Louisiana & Arkansas Railway Company has this day taken a suspensive appeal from a final judgment rendered against it in the suit entitled Louisiana & Arkansas Railway Company vs. F. L. Shaw, Sheriff & Tax Collector, and Arkansas Southern Railroad Company, No. 2075 on the Docket of the District Court of the Parish and State aforesaid, said judgment signed on the 22nd

day of October A. D. 1907, and said appeal made returnable to the Honorable, the Supreme Court of Louisiana at New Orleans, Louisiana, on the third Monday of December, A. D. 1907.

Now, therefore, if the above bounded Louisiana & Arkansas Railway Company shall prosecute its appeal and shall satisfy whatever judgment may be rendered against it, or that the same shall be satisfied by the proceeds of the sale of its property, real and personal, if it be cast in said appeal, otherwise that said security shall be liable in its stead; then, and in such case, the above obligation to be null and void, otherwise to be and remain in full force and virtue in law.

29

LOUISIANA & ARKANSAS RAILWAY
COMPANY,

By HENRY MOORE, *Gen. Att'y.*
HENRY MOORE.
R. L. TANNEHILL.

Filed in District Court this 31 day of October, 1907.

S. M. ABEL, *D'y Clerk.*

Endorsed: "L. & A. Ry. Co. vs. F. L. Shaw Shff. & T. C. et al.
Bond. Filed Oct. 31, 1907. S. M. Abel, Dy. C. D. C."

Extract from Minutes of the Fifth Judicial District Court, Parish of Winn, Louisiana.

No. 2075.

LOUISIANA AND ARKANSAS RAILWAY Co.
vs.

F. L. SHAW, Sheriff and Tax Collector, et als.

March 25, 1907.—Answer and reconventional demands filed.

Case set for the first day of the next term of court.

June 4, 1907.—Case set for Tuesday Morning June 11, 1907.

October 22, 1907.—Case taken up, opinion read by the court and judgment rendered for defendants, but allowing no damages, plaintiffs to pay costs of suit, Judgment signed see decree.

Motion for new trial filed, tried and over-ruled.

Plaintiffs asked for and obtained order for appeal both devolutive and suspensive made returnable to the Honorable Supreme Court of the State of Louisiana on the third Monday in December, 1907. Devolutive appeal bond fixed in the sum of \$200.00 and suspensive appeal bond according to law.

STATE OF LOUISIANA,
Parish of Winn:

I, P. K. Abel, Clerk of the Fifth Judicial District Court of the Parish of Winn do hereby certify that the foregoing 31 pages do

30 contain a true, correct and complete transcript of all the proceedings had, documents filed and evidence adduced upon the trial of the cause wherein Louisiana and Arkansas Railroad Company is Plaintiff and F. L. Shaw Sheriff and Tax-Collector is Defendant, instituted in this court and now in the records thereof under the No. 2075.

In testimony whereof I have hereunto set my hand and affixed the impress of the seal of said Court at Winnfield, La., on this the 10th day of December A. D. 1907.

[SEAL.]

(Signed)

P. K. ABEL,
Clerk of said Court.

31 Proceedings had in the Supreme Court of the State of Louisiana.

Motion to Amend.

In the Supreme Court.

No. 16913.

LOUISIANA AND ARKANSAS RAILWAY CO.

vs.

F. L. SHAW, Sheriff and Tax Collector, et als.

Now comes defendant the Arkansas Southern Railroad Company and respectfully moves and prays the Court to amend the judgment appealed from so as to give judgment against plaintiff in injunction for Five Hundred (\$500.00) Dollars damages as attorney's fees as prayed for in defendant's answer and reconventional demand and as admitted in statement of facts—that as thus amended said judgment be affirmed and for general relief.

(Signed)

A. A. GUNBY, *Att'y.*

(Endorsed:) No. 16913. Supreme Court of Louisiana. Louisiana and Arkansas Railway Co. vs. F. L. Shaw Sheriff and Tax Collector et als. Motion to Amend. Filed Decr. 18, 1907. (Signed) T. McC. Hyman, Clerk.

Continued.

NEW ORLEANS, FRIDAY, *March 20th*, 1908.

The Court was duly opened, pursuant to adjournment. Present Their Honors: Joseph A. Breaux, Chief Justice; and Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, and Alfred D. Land, Associate Justices.

No. 16913.

LOUISIANA & ARKANSAS RAILWAY COMPANY

vs.

F. L. SHAW, Sheriff and Tax Collector, et als.

This case was ordered by the Court to be continued until to-morrow, Saturday, the 21st day of March instant.

32

Called and Continued.

NEW ORLEANS, SATURDAY, *March 21st*, 1908.

The Court was duly opened, pursuant to adjournment. Present Their Honors: Joseph A. Breaux, Chief Justice; and Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, and Alfred D. Land, Associate Justices.

No. 16913.

LOUISIANA & ARKANSAS RAILWAY COMPANY

vs.

F. L. SHAW, Sheriff and Tax Collector, et als.

This cause came on this day to be heard. Whereupon the Court ordered the same to be continued to Monday, the 13th day of April, A. D. 1908, as an open case.

Called, Argued and Submitted.

NEW ORLEANS, MONDAY, *April 13th*, 1908.

The Court was duly opened, pursuant to adjournment. Present Their Honors: Joseph A. Breaux, Chief Justice; and Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, and Alfred D. Land, Associate Justices.

No. 16913.

LOUISIANA & ARKANSAS RAILWAY COMPANY

vs.

F. L. SHAW, Sheriff and Tax Collector, et als.

This cause continued from Saturday, the 21st day of March ultimo, came on this day to be heard and was argued by counsel: Mr. Henry Moore for the plaintiff and appellant; Mr. Andrew Augustus Gunby for the defendants, appellees. The Court then took said cause under advisement upon the briefs for the respective parties in interest and the papers now on files.

33

*Final Judgment.*NEW ORLEANS, MONDAY, *April 27th*, 1908.

The Court was duly opened, pursuant to adjournment. Present Their Honors: Joseph A. Breaux, Chief Justice; and Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, and Alfred D. Land, Associate Justices.

His Honor Mr. Justice Land, pronounced the opinion and judgment of the Court in the following case.

No. 16913.

LOUISIANA & ARKANSAS RAILWAY COMPANY

vs.

F. L. SHAW, Sheriff and Tax Collector, et als.

On Appeal from the Fifth Judicial District, Parish of Winn.

It is therefore ordered that the judgment appealed from be annulled, avoided and reversed, and it is now ordered that the injunction sued out by the plaintiff be reinstated and perpetuated as prayed for, and that the defendant railroad pay costs in both courts.

Nicholls, J., concurs in the decree.

Opinion of the Court.

34

MONDAY, April 27th, 1908.

No. 16913.

LOUISIANA & ARKANSAS RAILWAY COMPANY

vs.

F. L. SHAW, Sheriff and Tax Collector, et als.

Appeal from the Fifth Judicial District Court, Parish of Winn,
Wear, Judge.

Mr. Justice LAND:

Plaintiff enjoined the tax collector from selling its road bed and side tracks for special taxes levied for the years 1903, 1904, 1905 and 1906 in favor of the Arkansas Southern Railroad. The alleged ground for the injunction was exemption from taxation under Art. 230 of the Constitution of 1898. Defendants answering, averred that the exemption from taxation provided by said articles does not include the special taxes in question, which are a voluntary local assessment or contribution not for a governmental purpose but in aid of a public improvement for the common benefit of the taxpayers of the Parish. Further answering the defendants averred that if said exemption was intended to apply to special taxes voted and levied in favor of railroad enterprises prior to the adoption of the Constitution of 1908, said Art. 230 is, in that respect, in contravention of Art. 1, Sec. 10, of the Constitution of the United States prohibiting the states from passing any *ex part facto* law or laws impairing the obligation of contracts. Defendant prayed for the dissolution of the injunction with \$1000. damages for attorney fees.

The case was tried on an agreed statement of fact, and there was judgment in favor of the defendants, dissolving the injunction without damages and dismissing the suit with costs.

Plaintiff has appealed, and the defendant railroad has answered the appeal, praying that the judgment be amended by allowing

\$500 as damages for attorney fees, and that as thus amended be affirmed.

35 A tax of five mills to run for a term of ten years from the completion of the road, was voted by a majority of the taxpayers in number and amount of Winn Parish in favor of the Alexandria, Junction City & Shreveport Railway Co., at an election held in said parish on the first day of February 1898, conditioned upon the completion of said railroad into Winnfield within three years from that date, and the result of said election was duly promulgated. The Arkansas & Southern Railroad succeeded to all the rights of the original grantee in and to said tax. The road was not completed within three years as stipulated. "By proceedings and judgment of the Police Jury of Winn Parish" (which are not explained in the statement of facts) the Arkansas Southern Railroad Co. was given an extension of time to the 1st day of May, 1901, to complete its line of railroad into Winnfield. The road was completed within the extended time limit, and was accepted by the Police Jury, and taxes were levied in accordance with said special election beginning with the year, 1901, and such taxes have been paid by the property holders of the parish of Winn.

The line of railroad of the plaintiff company was commenced, built and constructed through the parish of Winn during the years 1901, 1902 and 1903.

Art. 230 of the Constitution of 1898, after specifying the classes of property which shall be exempt from taxation, proceeds to exempt from taxation for a period of ten years from the 1st day of January, 1900, the capital machinery and other property employed in mining operations, and certain manufactures.

The last paragraph of the article reads, in part, as follows: "there shall also be exempt from taxation for a period of ten years from the date of its completion any railroad or part of such railroad that may hereafter be constructed and completed prior to January 1st, 1904; provided that when aid has heretofore been voted by any parish, ward or municipality to any railroad not yet constructed, such railroad shall not be entitled to the exemption from taxation herein established, unless it waives or relinquishes such aid or consents to a resubmission of the question of granting such aid to a vote of the property taxpayers of the parish * * *" The Arkansas Southern Railroad Company in Nov. 1898 formally waived its right to exemption from taxation under said article.

It is admitted that the Louisiana & Arkansas Railway is entitled to exemption from *taxation*, but it is contended that *special taxes* in aid of railway enterprises do not constitute *taxation* in the sense of the constitution. In the answer of defendants, such special taxes are alleged to be voluntary local assessments or contributions. The judge below so held. We cannot concur in this view. The Constitution of 1898, after limiting parish and municipal taxation to ten mills on the dollar of valuation for all purposes whatever, provided for the levy of a *special* tax in excess of said limitation, for additional support of public schools, for the construction of public buildings, bridges, wharves, and other works of public permanent improvement.

Art. 232. In a subsequent article (270), the General Assembly was empowered to authorize the municipal authorities of the State, by a majority vote of the taxpayers, to levy *special* taxes in aid of public improvements or railway enterprises, within the limitation of five mills per annum and for not more than ten years.

The word *special* thus used implies merely an additional tax over and above the *general* tax authorized by the constitution. A special tax, whether levied under Art. 232 or Art. 270, must be equal and uniform throughout the territorial limits of the authority levying the tax. Art. 225. Under the constitutions of 1879 and 1898, special taxes in aid of railway enterprises have been uniformly levied upon all the taxable property within the limits of the taxing author-

ity and collected in the same manner as other taxes. Act. 35 of 1886; Act. 131 of 1898; Act. 145 of 1904. By authorizing such special taxes the constitution recognizes that they are for "local purposes, strictly public in their nature." Art. 224. In the exercise of the taxing power, the legislation if not forbidden by the organic law, may levy taxes for highways and roads, including canals and railways, to be constructed by the state or, under its authority, by the municipal subdivisions of the state within whose limits they may be needed. The state may also aid a railroad corporation by an exercise of the power to tax or may confer this power on the municipalities. Cooley on Taxation (3d Ed.) 212-215.

Local assessments are a peculiar species of taxation based on the assumption that a *portion* of the community is to be specially and peculiarly benefitted in the enhancement of the value of property *peculiarly* situated as regards a contemplated expenditure of public funds. A local assessment can be only levied on land, and cannot be made a personal liability, as it is an assessment on the thing supposed to be benefitted. It cannot be levied on a whole political subdivision as a county or town, but must be restricted to property situated in a district created for the express purpose of the levy, and possessing no other function or even existence. *Ib.* 1154 et seq. In *Charnock vs. Levee Company*, 38 La. Ann. 327, the court said that local assessments were not to be confounded with ordinary local taxation, citing *Burroughs, Taxation*, p. 460, as follows: "A tax for the local purposes of a county is imposed on the persons and property in the county, as distinguished from other parts of the state, but is usually imposed on all the subjects on which the State imposes a tax for State purposes. In local assessments, on the contrary, the tax is imposed on the real estate alone, and only on such real estate as is benefitted by the local improvement * * *. The benefit of the improvement is not only local but also specific, benefitting particularized property, and therefore this tax may be levied on this property which

38 receives a benefit." In the same case the court said that local assessments were not referred to in the provisions of the Constitution of 1879. In *Construction Co. vs. Tax Collector et als.*, 108 La. 435, the court held that a bridge tax levied under the Constitution of 1898 on all the property generally in a ward, is not a local assessment, even though for the imposition of it a vote of the taxpayers of the ward is required. The court said:

"The essentially characteristic feature of a local assessment is that it is levied on *particularized* property, and not on property generally. Charnock vs. Levee Co., 38 Ann. 327, * * * that the tax should be levied on each particular property in proportion to the benefit it is to derive from the expenditure of the avails of the tax."

In the recent case of L. & N. W. R. Co. vs. State Board of Appraisers et al. (120 La. 45-50, 394) this court held that certain special taxes levied in aid of public schools under Art. 232 of the Constitution of 1898, were not local assessments, but were ordinary taxes within the exemption from taxation accorded to newly constructed railroads by Art. 230 of the same instrument.

The case of Illinois Central Railroad vs. Decatur, 147 U. S., 190, simply holds that an exemption from taxation does not include special assessments, imposed to pay the cost of paying and grading a street, and charged upon contiguous property upon the theory that it is benefitted thereby. In Ford vs. Delta and Pine Land Co., 164 U. S., 662, the special assessments were for levee purposes and were levied on property specially benefitted. The court recognized that such special assessments did not come within the constitutional limitation as to taxation, being "for the purpose of ameliorating property and enhancing its value."

We find no difficulty in arriving at the conclusion that the tax voted in favor of the defendant railroad company comes within the meaning of the term, "taxation," as used in Art. 230 of the Constitution of 1898, exempting newly constructed railroads from
39 taxation for a term of years.

The second contention of the defendant is that its vested rights to said special taxes cannot be lawfully divested, and that if Art. 230 of the Constitution of 1898 can be construed as an exemption of the plaintiff railroad from the payment of such taxes, then said exemption is null and void as impairing the obligation of defendant's contract with the taxpayers of the parish of Winn.

The tax was voted on Feb. 1st, 1898, conditioned however on the completion of the railroad within three years from that date. The road was not completed on or before Feb. 1st, 1901. According to the statement of facts, by some "proceedings and judgment of the Police Jury of Winn Parish," which are not explained, the defendant railroad was given an extension of time to the 1st day of May, 1901, to complete the road, and it was completed on or before that date. The road seems to have been constructed after the adoption of the Constitution of 1898, and to have earned the exemption provided by Art. 230. The statement of facts reads: The Arkansas Southern Railroad Company duly filed its waiver of exemption of taxes on the 5th day of November 1898 and same is duly recorded in Conveyance Book E. pp. 446 and 447." Art. 230 provided that the exemption should not apply to any railroad that might thereafter be constructed and completed prior to January 1st, 1904, to which aid had been previously voted by any parish, ward or municipality, unless it waives or relinquishes such aid or consents to a resubmission of the question of granting such aid to a vote of the property

taxpayers. The defendant railroad instead of waiving the aid voted, waived the exemption.

When the Constitution was adopted in May 1898, aid had been voted to the predecessors of the defendant railroad, on a certain condition. It appears from the statement of facts that this condition was not complied with, but, in some way not explained, the railroad procured a modification of the contract as to the time of completion. It cannot, therefore, be said that the defendant railroad acquired all of its contract rights prior to the adoption of the Constitution of 1898.

But, however this may be, whatever rights the voting of the tax conferred on the railroad company were contingent and prospective. The tax, if earned, was to be levied on whatever *taxable* property might be found in the parish after the completion of the road.

The question of the taxability of property *in futuro* was necessarily left to the determination of the sovereign. A few months after the voting of the tax, the Constitution of 1898 was adopted. The framers of that instrument in order to encourage the construction of new railroads offered a *bonus* in the form of an exemption from taxation for ten years. The plaintiff railroad accepted this offer and by the timely construction of its road earned this bonus or exemption. Hence, the plaintiff railroad came into existence under shelter of the constitutional exemption, and is not and never has been taxable property in the parish of Winn. The right of the defendant railroad to a tax levy did not become vested until the year 1901, three years after the adoption of the Constitution of 1898.

It is therefore ordered that the judgment appealed from be annulled avoided and reversed, and it is now ordered that the injunction sued out by the plaintiff be reinstated and perpetuated as prayed for, and that the defendant railroad pay costs in both courts.

Nicholls, J., concurs in the decree.

41

Petition for Rehearing.

In the Supreme Court of Louisiana.

No. 16913.

LOUISIANA & ARKANSAS RAILROAD CO.

VS.

F. L. SHAW, Sheriff, et als.

Application for Rehearing.

Now comes the Arkansas Southern Rail Road Company, defendant herein and specially represents to the Court that the judgment and decree of the Supreme Court rendered herein on April 27th, 1908, is contrary to the law and the evidence and of the jurisprudence of this State and of the United States. Avers that said decision does grave injury and injustice to this defendant and violates the Constitution and laws of the United States.

Wherefore defendant prays that the decree be set aside and that defendant be granted a full rehearing in this case and for general relief, according to law.

(Signed)

A. A. GUNBY, *Att'y.*

(Endorsed:) No. 16913. Supreme Court of Louisiana. Louisiana & Arkansas Rail Road Company vs. F. L. Shaw, Sheriff, et als. Application for Rehearing. Filed May 11th, 1908. (Signed) Paul E. Mortimer, Dep. Clerk.

42 *Rehearing Refused—Extracts from Minutes.*

NEW ORLEANS, FRIDAY, June 26th, 1908.

The Court was duly opened, pursuant to adjournment. Present Their Honors: Joseph A. Breaux, Chief Justice; and Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, and Alfred D. Land, Associate Justices.

By the Court.

No. 16913.

LOUISIANA & ARKANSAS RAILWAY COMPANY

vs.

F. L. SHAW, Sheriff and Tax Collector, et als.

It is ordered that the rehearing applied for in this case be refused.

Petition for Writ of Error.

To the Honorable Joseph A. Breaux, Chief Justice of the Supreme Court of Louisiana:

The petition of the Arkansas Southern Railway Company, hereinafter acting for itself and its co-defendants in the suit entitled "Louisiana & Arkansas Railway Company vs. F. L. Shaw, Sheriff and Tax Collector of Winn Parish et als, No. 16,913, on the Docket of the Supreme Court of Louisiana, respectfully represents, That in the above entitled and numbered case a final judgment has been rendered by the Honorable Supreme Court of Louisiana, the highest court and court of last resort in said State, against your petitioners enjoining the collection of the special tax assessed against the property of plaintiff by the State Board of Appraisers to pay the special tax of 5 mills voted in favor of the Arkansas Southern Railway Company by the tax papers of Winn Parish February 1st, 1908. Aver that an application for re-hearing was filed and urged in said case, that re-hearing was refused by the Supreme Court of Louisiana on June 26th, 1908.

That in said suit was drawn in question the right of the Constitution of the State of Louisiana of 1898 to exempt property of plaintiff in said Parish of Winn from the payment of the special taxes voted in aid of the Arkansas Southern Railway

Company prior to the adoption of the Constitution on the ground that such exemption impaired the obligation of the contract entered into between the tax payers of Winn Parish and the defendant railroad on February 1st, 1898; that said alleged exemption divests the vested rights of defendant is in conflict with Section 10, Article I. of the Constitution of the United States, and is null and void; and that a manifest error hath happened to the great damage of petitioners as appears more fully by the answer in said case and by the assignment of errors addressed to the Supreme Court of the United States which is hereto annexed and made part of this petition. Your petitioners therefore pray that a writ of error be granted from said final judgment to the Supreme Court of the United States within 30 days from the filing of this petition; that a bond be fixed by your Honors to operate as a supersedeas conditioned as the law directs. Petitioners further pray that plaintiff be cited according to law and for general relief.

(Signed)

A. A. GUNBY, *Att'y.*

Order Granting Writ.

NEW ORLEANS, LA., *July 1st, 1908.*

Writ of error, to operate as a supersedeas. Allowed on bond for \$1500.00 with good security conditioned according to law.

(Signed)

JOS. A. BREAUUX,

Chief Justice Supreme Court of Louisiana.

(Endorsed:) No. 16,913. Supreme Court of Louisiana. La. & Ark. Ry. Co. vs. F. L. Shaw, Sheriff, et als. Petition to Chief Justice Jos. A. Breaux, for Writ of Error to Supreme Court of the United States. Filed July 2, 1908. (Signed) T. McC Hyman, Clerk.

44

Assignment of Errors.

No. 16913.

LOUISIANA & ARKANSAS RAILWAY COMPANY

vs.

F. L. SHAW, Tax Collector, et als.

To the Honorable Supreme Court of the United States:

The Arkansas Southern Railway Company and its co-defendants in the above entitled cause now come and assign as error, apparent on the face of the record and on final judgment rendered herein by the Supreme Court of Louisiana the following to-wit:

1st. That the voting of the special tax by the tax payers of Winn Parish on Feb'y 1st, 1898, in aid of the construction of the Arkansas Southern Railroad constituted a contract, the obligation of which could not be impaired or modified by subsequent legislation nor by action of the limited Constitutional Convention of 1898, said convention had no such power.

2nd. The Constitution of 1898 was declared adopted without submission to the people May 12th, 1898, more than three months after the contractual relations were entered into which affected every species of property in Winn Parish taxable at the time the special taxes were voted under the Laws then in force, and the State of Louisiana neither through its Legislature, nor through a restricted Constitutional Convention called by the Legislature, could not change the taxability of property, nor exempt property in said parish from taxation so as to impair or affect the obligation of the contract previously subsisting, and under which, and on faith of which defendant railroad was built.

3rd. The Court erred in holding that this contract was prospective and contingent, and that it was modified in any manner by the Police Jury so as to affect the obligation of tax payers of Winn, which is conclusively shown by the opinion and decision of the Supreme Court of Louisiana in the case of *James vs. Arkansas Southern Railway Co.* 110 La. 145, where it was held that the obligation and contract of tax payers was not changed by such action.

45 4th. The defendant road became vested with all the rights of the beneficiary of the special tax by an act of consolidation and merger under the laws of Louisiana and built the first railroad into Winn Parish by virtue of and in consideration of the special tax voted for ten years, and plaintiff was fully notified of this contract and acquired its right of way and grounds for depots and switches in the Parish of Winn after the special taxes had been voted by the tax payers and after defendant's road had earned the taxes by completing its railroad:

Wherefore, defendants pray that the judgment of the Supreme Court of Louisiana be reversed and that there be judgment in favor of the Arkansas Southern Railway Company dissolving plaintiff's injunction and enforcing defendants' right under the contract with the tax payers of Winn Parish to collect the taxes legally assessed against the property of plaintiff affirming and re-instating the judgment of the District Court and for general relief.

(Signed)

A. A. GUNBY, *Att'y.*

(Endorsed:) No. 16,913. Supreme Court of Louisiana. La. & Ark. Ry. Co. vs. F. L. Shaw sh'ff et als. Assignment of Errors for Writ of Error to Supreme Court of United States. Filed July 2, 1908. (Signed) T. McC. Hyman, Clerk.

Writ of Error.

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judge of the Supreme Court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of the said

State in which a decision could be had in the said suit between Louisiana and Arkansas Railway Company, Plaintiff and
 46 F. L. Shaw Sheriff and Tax Collector Parish of Winn, and the Arkansas Southern Railway Company, defendants No. 16,913 of the Docket of said Court, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of the clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened to the great damage of the said Arkansas Southern Railway Company and F. L. Shaw Sheriff and Tax Collector as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 1st day of July, in the year of our Lord one thousand nine hundred and eight.

[SEAL.]

(Signed) H. J. CARTER,
*Clerk of the Circuit Court of the United
 States for the Eastern District of Louisiana.*

47 Allowed by _____.

(Endorsed:) No. 16,913. Arkansas Southern Railway Co. et al. Plaintiffs in error versus Louisiana and Arkansas Ry. Co. Defendant in Error. (Writ of Error) Copy of Writ of Error lodged in the Clerk's Office of the Supreme Court of Louisiana, in pursuance of the statute in such cases made and provided, this 2nd, day of July one thousand nine hundred and eight. (Signed) A. A. Gunby, Attorney of Plaintiff in Error. Filed July 2, 1908. (Signed) T. McC. Hyman, Clerk.

48 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Louisiana and Arkansas Railway Company, plaintiff, and F. L. Shaw Sheriff and Tax Collector Parish of Winn, and the Arkansas Southern Railway Company, defendants. No. 16913 of the Docket of said Court wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in

49 favor of such their validity; or wherein was drawn in question the construction of the clause of the Constitution, or of a treaty, or statute of, or commission held under the United States. and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution. treaty, statute, or commission; a manifest error hath happened to the great damage of the said Arkansas Southern Railway Company and F. L. Shaw, Sheriff and Tax Collector as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 1st day of July, in the year of our Lord one thousand nine hundred and eight.

[Seal Circuit Court U. S., Eastern District of Louisiana.]

H. J. CARTER,

*Clerk of the Circuit Court of the United States
for the Eastern District of Louisiana.*

Allowed by _____.

[Endorsed:] No. 16913. Arkansas Southern Railway Co. et al Plaintiffs in error versus Louisiana and Arkansas Ry. Co., Defendant in Error. Writ of error. Filed July 2, 1908. T. McC. Hyman, Clerk.

5—211

Know all men by these presents, That we The Arkansas Southern Railway Company, F. L. Shaw Sheriff and Tax Collector, as principals and A. A. Gunby, as sureties, are held and firmly bound unto the Louisiana & Arkansas Railway Company in the full and just sum of Fifteen Hundred Dollars to be paid to the said Louisiana & Arkansas Railway Co., or to their certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 2nd day of July in the year of our Lord, one thousand nine hundred and eight.

Whereas, lately at a Session of the Supreme Court of Louisiana in a suit depending in said Court, between the Louisiana & Arkansas Railway Company vs. F. L. Shaw Sheriff and Tax Collector and the Arkansas Southern Railway Company a judgment was rendered against the said Arkansas Southern Railway Company and F. L. Shaw Sheriff and Tax Collector and the said Arkansas Southern Railway Company and F. L. Shaw Sheriff and Tax Collector having obtained a writ of Error and filed a copy thereof in the Clerk's Office of the said Supreme Court of Louisiana to reverse the final judgment in the aforesaid suit, and a citation directed to the said Louisiana & Arkansas Railway Company citing and admonishing — to be and appear before the Supreme Court of the United States, to be holden at Washington D. C., within 30 days from the date hereof.

Know, the condition of the above obligation is such, That if the said Arkansas Southern Railway Co. and F. L. Shaw Sheriff and Tax Collector shall prosecute said Writ of Error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

51 [SEAL.] ARKANSAS SOUTHERN RAILWAY
CO. AND
F. L. SHAW,

Sheriff and Tax Collector,

Per A. A. GUNBY, *Att'y.*

(Signed)

A. A. GUNBY, *Surety.*

[SEAL.]

Approved by
(Signed)

JOS. A. BREAUX,
Chief Justice.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, ss:

Personally appeared, A. A. Gunby who being duly sworn, deposes and says that he is the surety on the within bond, that he resides at Monroe, Ouachita Parish, State of Louisiana, and is worth the full sum of Fifteen hundred (\$1500.00) Dollars, over and above all his debts and liabilities and property exempt from execution.

(Signed)

A. A. GUNBY.

Subscribed and sworn before me this 2nd, day of July 1908.

[SEAL.] (Signed) FELIX J. PUGH,
Notary Public, Parish of Orleans, State of Louisiana.

(Endorsed:) No. 16913. Supreme Court of Louisiana. Arkansas Southern Railway Company et als. *vs.* plaintiff in error. *vs.* Louisiana and Arkansas Railway Company, defendant in error. Bond. Filed July 2nd, 1908. (Signed) T. McC. Hyman, Clerk.

52 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Thomas McCabe Hyman, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that the foregoing Fifty-one (51) Pages, contain a full and true and complete copy of the transcript of the proceedings had in the Fifth Judicial District Court for the parish of Winn, in a certain suit wherein Louisiana and Arkansas Railway Company, was plaintiff and F. L. Shaw, Sheriff and Tax Collector, and Others, were defendant-, and also of all the proceedings had in this Court on the appeal taken, which appeal is now on the files thereof under No. 16913.

In testimony whereof I have hereunto set my hand and affixed the seal of this Honorable Court, at the City of New Orleans, this 11th day of July, Anno Domini, 1908, and in the One hundred and thirty-third year of the Independence of the United States of America.

[Seal Supreme Court of the State of Louisiana.]

T. McC. HYMAN, *Clerk.*

53 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Joseph A. Breaux, Chief Justice of the Supreme Court of the State of Louisiana, do hereby certify that Thomas McCabe Hyman, is Clerk of the Supreme Court; that the signature of said Thomas McCabe Hyman to the foregoing certificate is in the proper handwriting of him the said Clerk; that said certificate is in due form of law; and that full faith and credit are due to all of his official acts such.

In testimony whereof I have hereunto set my hand and seal, at the City of New Orleans, this 11th day of July, Anno Domini, 1908.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
Chief Justice.

54 THE UNITED STATES OF AMERICA,
Supreme Court of the State of Louisiana:

The President of the United States to The Louisiana & Arkansas Railway Company, through its proper officer at Minden, Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana at New Orleans, wherein The Arkansas Southern Railway Company and F. L. Shaw, Sheriff and Tax Collector are plaintiffs in error, and the Louisiana and Arkansas Railway Company is defendant in error to show cause, if any there be, why the judgment rendered against the said Arkansas Southern Railway Company and F. L. Shaw, Sheriff, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 1st day of July, in the year of our Lord one thousand nine hundred and eight.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

55 [Endorsed:] Supreme Court of the State of Louisiana.
 No. 16913. Arkansas Southern Railway Company et als.,
 Plaintiffs in error, vs. Louisiana and Arkansas Ry. Co., Defendant
 in error. Citation. For return. Filed July 14, 1908. T.-McC. Hyman, Clerk.

Rec'd the within citation & copy on July 5, 1908, and on July 6, 1908, served the copy on J. G. Boyce, head book-keeper in J. F. Giles' office at Spring Hill, Webster Parish, La., J. F. Giles being temporary absent. Mr. J. F. Giles being the agent for La. & Ark. R. R in Louisiana.

Sworn to & served by

C. R. DAVIS,
Deputy Sheriff Webster P'h, La.

[Seal Clerk's Office, Parish of Webster, State of Louisiana.]

W. C. McKINNEY,
Deputy Clerk Dist. Court.

July 13", 1908.

Endorsed on cover: File No. 21,275. Louisiana Supreme Court. Term No. 211. Arkansas Southern Railway Company and F. L. Shaw, sheriff and tax collector, plaintiffs in error, vs. Louisiana & Arkansas Railway Company. Filed July 27th, 1908. File No. 21,275.

Miss Supreme Court, U. S.
FILED.

JAN 19 1910

JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States

OCTOBER TERM, 1909.

No. **38.**

ARKANSAS SOUTHERN RAILWAY COMPANY AND
F. L. SHAW, SHERIFF AND TAX COLLECTOR,
PLAINTIFFS IN ERROR,

VERSUS

LOUISIANA AND ARKANSAS RAILWAY
COMPANY.

IN ERROR FROM THE SUPREME COURT OF LOUISIANA.

ALLAN SHOLARS.
A. A. GUNBY,

Attorney for Plaintiffs in Error.

J. G. HAUSER, "The Legal Printer," 620-622 Poydras Street, N. O.

REPORT OF THE COMMISSIONER OF THE LAND OFFICE

FOR THE YEAR 1881

ALBANY, N. Y. 1882

PRINTED BY THE COMMISSIONER OF THE LAND OFFICE

ALBANY, N. Y. 1882

THE LAND OFFICE HAS THE HONOR TO ACKNOWLEDGE THE RECEIPT OF THE

AMOUNT OF \$100,000.00 PAID BY THE STATE OF NEW YORK

FOR THE YEAR 1881

AND TO CERTIFY THAT THE SAME HAS BEEN DEPOSITED IN THE

TREASURY OF THE STATE OF NEW YORK

FOR THE YEAR 1881

AND TO CERTIFY THAT THE SAME HAS BEEN DEPOSITED IN THE

TREASURY OF THE STATE OF NEW YORK

FOR THE YEAR 1881

AND TO CERTIFY THAT THE SAME HAS BEEN DEPOSITED IN THE

TREASURY OF THE STATE OF NEW YORK

Supreme Court of the United States

OCTOBER TERM, 1909.

No. 211.

ARKANSAS SOUTHERN RAILWAY COMPANY AND

F. L. SHAW, SHERIFF AND TAX COLLECTOR,

PLAINTIFFS IN ERROR,

VERSUS

LOUISIANA AND ARKANSAS RAILWAY

COMPANY.

IN ERROR FROM THE SUPREME COURT OF LOUISIANA.

STATEMENT OF CASE.

The Louisiana and Arkansas Railway Company brought suit in the Fifth District State Court in Winn Parish, Louisiana, for the purpose of enjoining the Sheriff and Tax Collector from selling its property in

said Parish of Winn to enforce the collection of a five-mill special tax voted by the taxpayers of Winn in favor of the Arkansas Southern Railway Company. The petition for injunction declares that the Louisiana and Arkansas Railway Company built 8.9 miles of main track and 2.14 miles of side track in Winn Parish in 1901 and 1902, of which trackage .93 of a mile of main track and 1.55 miles of side track are located in the Town of Winnfield; that in 1903 the line of said railroad company was completed through the parish, and said company now owns and operates in Winn Parish 26.55 miles of main track and 2.62 miles of side track, all built subsequent to the adoption of the Constitution of Louisiana in 1898; and, by the provisions of Article 230 of said Constitution, all of said railway property is exempt from taxes and from taxation in the State and in the Parish of Winn, in Louisiana.

The petition further alleges that, notwithstanding said exemption from all taxation, the State Board of Appraisers has illegally assessed said property, and the Assessor of Winn Parish has illegally extended against said property on the assessment rolls of said parish a special tax in favor of the Arkansas Southern Railway Company, amounting to \$235.85 for the year 1903, and to \$680.10 for each of the years 1904, 1905 and 1906; that F. L. Shaw, Sheriff of Winn Parish, has advertised said property for sale for said illegal taxes on March 23, 1907, and that the attempt to sell said property for said alleged taxes and for any taxes is unconstitutional and

an attempt to deprive petitioner of the benefit of its legal and constitutional exemption under the Constitution of the State of Louisiana, and to deprive it of its property without due process of law, in contravention of Section 1 of Article XIV of the amendments to the Constitution of the United States.

The petition prays for citation of F. L. Shaw, Sheriff and Tax Collector; J. T. Durham, Assessor; J. M. Webb, president of the Police Jury, and the Arkansas Southern Railway Company, for judgment against all of said defendants, annulling and setting aside said alleged illegal assessment and extension of taxes, and decreeing petitioner entitled to legal exemption from the taxes alleged and from all taxes.

The injunction was granted, and the suit was filed March 7, 1907. (Rec., pp. 1 to 7, inclusive.)

The defendants answered together. (Rec., pp. 10, 11, 12.)

They aver that the special tax in favor of the Arkansas Southern Railway Company was voted by a majority in number and amount at a special election legally held on February 1, 1898, and the result of that election was promulgated and the tax levied on February 7, 1898, in accordance with the provisions of Section 4 of Act 35 of 1886 of the Acts of Louisiana, long before the adoption of the Constitution of 1898.

“Respondents aver that said special taxes are not such ‘taxation’ as referred to in Article 230 of the Constitution of Louisiana adopted in 1898, but the

so-called special taxes are a voluntary local assessment, or contribution voluntarily levied upon themselves by the taxpayers of Winn Parish, not for governmental purposes, but in aid of a public improvement for the common benefit and advantage of the said taxpayers, and the Constitution does not exempt, nor intend to exempt, new railroads from the payment of such local assessments or voluntary contributions."

The answer further pleads:

"That the provisions of the Constitution of 1898, exempting new railroads from taxation, did not apply to voluntary contributions levied by a body of taxpayers in aid of railroad enterprises or other public improvements, and that said Constitution could not apply to such taxes already voted and levied without being in contravention of the Constitution of the United States, providing that no State shall pass any *ex post facto* law or laws impairing the obligation of contracts. (Art. I, Section 10.)

"Defendant Arkansas Southern Railroad Company specially pleads that its vested right to said special taxes cannot be divested, and, if Article 230 of the Constitution of Louisiana is construed to have intended to exempt a new railroad built in Winn Parish from the payment of said special taxes, the said exemption is unconstitutional, null and void."

These issues were tried in the District Court on an agreed statement of facts, which will be found on pages 15 and 16 of the printed record.

The statement of facts shows that the election was held and the special tax voted and promulgated prior to the adoption of the Constitution of 1898; that the road was built and completed according to the requirements

of the contract, and that the Arkansas and Louisiana Railway Company acquired the right of way for its main track and the grounds for its depots and switches after the Arkansas Southern Railroad was completed to Winnfield. (See paragraph 9 of statement of facts, Rec., p. 16.)

Judge George Wear, the District Judge who tried the case in the first instance, sustained the defendants in both contentions made by them, holding that the exemption of new railroads from "taxation" in Article 230 of the Louisiana Constitution of 1898 does not include special taxes voted by the taxpayers in aid of railroads or other public improvements, and further holding:

"As to the question of Article 230 of the Constitution being null and void by reason of the special tax having been voted and promulgated before the adoption of that article of the Constitution of 1898, the Court is of the opinion that the obligation of a contract can no more be impaired by constitutional provision than by legislative enactment."

Rec., pp. 17, 18.

On appeal the Supreme Court of Louisiana reversed the judgment of the District Judge on both points, and rendered judgment in favor of the Louisiana and Arkansas Railway Company, perpetuating the injunction and condemning the Arkansas Southern Railway Company to pay all costs. Mr. Justice Nicholls only concurred in the decree. (Rec., pp. 24-28.)

An application for rehearing having been refused, the Arkansas Southern Railway Company and F. L. Shaw,

Sheriff, applied for a writ of error from the Supreme Court of the United States to the Supreme Court of Louisiana, which was granted on the following assignment of errors (Rec., p. 30):

“ASSIGNMENT OF ERRORS.

“FIRST. That the voting of the special tax by the taxpayers of Winn Parish on February 1, 1898, in aid of the construction of the Arkansas Southern Railroad, constituted a contract between said taxpayers and said railroad which could not be impaired, in whole or in part, by subsequent legislation, nor by action of the limited Constitutional Convention of 1898; said convention had no such power.

“SECOND. The Constitution of 1898 was declared adopted, without submission to the people, May 12, 1898, more than three months after the contractual relations were entered into, which affected every species of property in Winn Parish taxable at the time the special taxes were voted under the laws then in force, and the State of Louisiana, neither through its Legislature nor through a restricted Constitutional Convention called by the Legislature, could not change the taxability of property nor exempt property in said parish from taxation so as to affect or impair the obligation of the contract previously subsisting and under which and on faith of which defendant railroad was built.

“THIRD. The Court erred in holding that this contract was prospective and contingent, and that it was modified in any manner by the Police Jury so as to affect the obligation of taxpayers of Winn, which is conclusively shown by the opinion and decision of the Supreme Court of Louisiana in the case of *James vs. Arkansas Southern Railway Company*, 110 La.

145, where it was held that the obligation and contract of the taxpayers was not changed by such action.

"FOURTH. The defendant road became vested with all the rights of the beneficiary of the said special tax by an act of consolidation and merger under the laws of Louisiana, and built the first railroad into Winn Parish by virtue of, and in consideration of, the special tax voted for ten years, and plaintiff was fully notified of this contract, and acquired its right of way and depot grounds in the Parish of Winn after the special taxes had been voted by the taxpayers, and after defendant had earned the taxes by completing its railroad."

These assignments may all be resolved into one Federal question that the exemption from taxation in Article 230 of the Louisiana Constitution of 1898, invoked by the Louisiana and Arkansas Railway Company in its injunction suit, and sustained by the Supreme Court of Louisiana, is in conflict with the Constitution of the United States because it impairs the obligation of the contract between plaintiffs in error and the taxpayers of Winn Parish. Said exemption is, therefore, null and void in so far as it affects the right of plaintiffs in error to collect the special tax on property situated in Winn.

The writ of error was taken on this question. But we submit that the whole case is brought up, and that, having jurisdiction of the case, this Court will dispose of all the issues passed upon by the Supreme Court of Louisiana.

If we be correct in this position, we respectfully submit that the Supreme Court of Louisiana erred in holding

that the word "taxation" in the clause of Article 230 of the Louisiana Constitution of 1898, exempting new railroads from "taxation," embraces special taxes voted by a parish in aid of public improvements. An exemption from taxation must be strictly construed, and in this instance the Supreme Court of Louisiana departed from its own well-settled rules of interpretation.

42 An. 1098; 116 La. 144; 11 An. 220.

Statutes have no retrospective effect or operation unless this purpose is announced specifically in the act.

39 An. 115.

Voluntary contributions, though in the *nature of taxes*, do not constitute general or ordinary taxation in the sense in which that word is ordinarily used.

104 La. 284.

The Supreme Court of Louisiana also departed from the well-considered jurisprudence of the Supreme Court of the United States and the Supreme Courts of many States.

Illinois Central Railroad vs. Decatur, 147 U. S. 190; *Ford vs. Delta & Pine Land Co.*, 164 U. S. 662; 108 Cal. 189; 91 N. Y. 574; American and English Encyclopædia of Law, "Exemptions from Taxation," Vol. 12, p. 314; Words and Phrases, *verbo* Taxation, p. 6879.

The doctrine reached and announced in all the cases is that, under the rule of strict construction, exemptions from taxation must be limited to taxes levied by law to

meet the expenses necessary for the maintenance of the general government; in other words, to *ordinary* taxes.

“Exemption from taxation must be taken as an exemption from the burden of ordinary taxes.”

147 U. S. 190.

The Supreme Court of Louisiana fell into the error of supposing that this rule only excluded “local assessments,” strictly so called, while it is clear, on principle, that the rule excludes from a general exemption all forms of contributions, assessments or special taxes which are voluntarily imposed by the taxpayers on themselves. It is universally held that such form of taxation is not a burden; it is voluntary, and has the object of local advantage and benefit for its purpose, whether it be called “local assessment,” “special tax,” or “voluntary contribution.” In all cases, it is different in purpose, different in form, and different in origin from ordinary taxation.

But, assuming that the construction of the State Constitution is conclusive and binding on the Supreme Court of the United States, and that your Honors will not disturb that construction, we must accept as true the ruling which holds that the word “taxation” in Article 230 covers and includes the special taxes voted in favor of the Arkansas Southern Railway Company, and was intended to exempt new railroads from payment of said taxes.

This would leave the sole question for examination and decision as to whether said taxes are protected by the obligation clause of the Federal Constitution.

ARGUMENT.

FIRST. The Arkansas Southern Railway Company undoubtedly had a legal contract with the taxpayers of Winn Parish, in consideration of which its railroad was built.

SECOND. If it had a contract, that contract dated from the date on which the special election was held and the tax voted according to law.

THIRD. If it had a contract, all classes of property taxable at the time the election was held were affected by that contract, and no property in the Parish of Winn, or that might come into the Parish of Winn, could be exempt from that special tax without violating the Constitution of the United States by impairing the obligation of that contract.

I.

There is no dispute in this case regarding the regularity and validity of the tax claimed by the Arkansas Southern Railroad Company. The election was held under Act 35 of 1886, which was expressly enacted to carry into effect Article 242 of the Louisiana Constitution of 1879. Every legal requirement was complied with.

The Constitution of the State and the law carrying it into effect expressly authorized the taxpayers to vote a tax so as to bind all present property-holders, and all

who should subsequently acquire property or bring property within the limits of Winn Parish. After said tax was voted a large number of taxpayers of Winn Parish brought suit to annul and set aside the election on numerous grounds. That suit was entitled *C. James et al. vs. The Arkansas Southern Railroad Company*, and the opinion and decision of the Supreme Court of Louisiana in said suit will be found in 110 La. 145.

Judge Nicholls was the organ of the Court, and he effectually disposes of every objection to the legality of said tax. One of the points made by the objectors was that the Police Jury had extended for a short time the limit in which the railroad should be built to Winnfield. The opinion holds that the Police Jury had the right to make the extension, as it had, of its own motion, fixed the limit in its ordinance, whereas the law under which the election was held does not fix any specified time, nor did the petition voted on by the taxpayers fix any time. This and all other possible objections were passed on and overruled in a case where they were directly at issue, and it is clear that they did not, and cannot, affect the validity and binding effect of said tax.

We wish to quote the opinion in the cited case of Judge Nicholls for further reasons:

“The aid voted to be extended to the company was not a mere gratuity. The parties stood related to each other by an *engagement in the nature of a contract*. The company was to build the road through the parish to Winnfield in consideration, or part consideration, of the aid. The aid was to be extended

in consideration of the building of the road with its incidental advantages. It was to the interest of both parties that the road should be constructed."

This is the clearest possible recognition that a contract between the railroad company and the taxpayers sprang into existence when the election was held. No other conclusion can be drawn from the terms of Act 35 of 1886, under which the election was held. The railroad company presents a proposition to build a certain railroad in the form of a petition which is signed by one-third of the property-tax payers of the parish. On this petition the Police Jury orders an election, at which the property-holders who are qualified electors vote for the tax or against the tax.

"SECTION 4. If a majority in number and in value of the property-tax payers of such parish, city or incorporated town shall vote in favor of such levy of special tax, then the Police Jury, for and on behalf of such parish, or the municipal authorities for and on behalf of such city or incorporated town, shall immediately pass an ordinance levying such tax, and for such time as may have been specified in the petition, and shall designate the year in which such taxes shall be first levied and collected."

Surely, such a transaction has all the elements of a legal contract—the parties, the consent, the consideration, and mutual obligations.

What is a contract?

As far back as 6 Cranch, 137, in the case of *Fletcher vs. Peck*, Chief Justice Marshall defined a contract to be a compact between two or more persons.

"And it is either executory or executed. An executory contract is one in which a party binds himself to do or not to do a particular thing. An executed contract is one in which the object of the contract is performed. A contract executed, as well as one which is executory, contains obligations binding on the parties. Since the Constitution uses the general term 'contract,' without distinguishing between those which are executory and those which are executed, it must be construed to comprehend the latter as well as the former."

In the *Dartmouth College case* Judge Washington in his concurring opinion (4 Wheaton, 657) says:

"What is a contract? It may be defined to be a transaction between two or more persons in which each party comes under an obligation to the other, and each reciprocally acquires a right to whatever is promised by the other. Under this definition, says Mr. Powell, it is obvious that every feofment, gift, grant, agreement, promise, etc., may be included, because in all there is a mutual consent of the minds of the parties concerned in them upon an agreement between them respecting some property or right that is the object of the stipulation. He adds that the ingredients requisite to form a contract are parties, consent and an obligation to be created or dissolved, or restraining them from doing something which they before might have done or omitted."

There have been many other definitions, or modified definitions, of contracts; but the essence of them all is embodied in the definition of a contract by Article 1761 of the Civil Code of Louisiana:

“A contract is an agreement by which one person obligates himself to another to give, to do or permit, or not to do, something, expressed or implied by such agreement.”

We submit that these definitions from the common law and from the civil law are sufficiently broad to embrace the transaction between the Arkansas Southern Railroad Company and the taxpayers of Winn Parish. But the Supreme Court of Louisiana says this contract was conditional and prospective, and that such a contract is not entitled to be protected from impairment. We must confess we cannot follow the force of this reasoning. A conditional contract is as binding as any other kind of contract. It is as much an executory contract as an unconditional contract, and as much entitled to protection and enforcement on the happening of the condition. The obligation of a contract does not in anywise depend upon its exigibility or maturity.

The Court says the obligation was prospective—in *futuro*. The same thing might be said of the obligation to pay an undue note.

The Civil Code of Louisiana has a clear and concise announcement on this subject.

“ART. 2028. The contract of which the condition forms a part is, like all others, complete by the assent of the parties; the obligee has a right of which the obligor cannot deprive him; its exercise is only suspended, or may be defeated, according to the nature of the condition.”

II.

It follows from the last-cited article of the Civil Code of Louisiana that the date of the contract was the date of the special election—viz., February 1, 1898. It is admitted that there ever was a contract between the Arkansas Southern Railway Company and the taxpayers of Winn, it certainly was created on the date when the taxpayers voted the tax. It was on that day they gave assent. It was on that day they acted. After that date the taxpayers did nothing towards completing the contract. They simply waited until it became exigible by the fulfillment of the condition, and then, like men, they proceeded to discharge their obligation by paying the tax.

Whatever rights plaintiffs in error had to this tax undoubtedly vested on the day the election took place. In Mr. Webster's argument (4 Wheaton, 576) it is shown that a privilege, immunity or liberty may be a vested right as well as property. Rights to do certain acts or to acquire certain things may be vested rights, to all legal intents, as completely as the right to possess property. Webster quotes a learned Judge of this Court as saying:

"When I say that a right is vested in a citizen, I mean that he has the power to do certain actions, or to possess certain things, according to the law of the land."

It cannot be denied that as soon as the tax was voted in February, 1898, the Arkansas Southern Railway Company had an interest in that tax; it had the right to per-

form certain actions, to acquire and possess that tax by doing certain things. This was clearly a vested right.

III.

But, says the Supreme Court of Louisiana, this vested right could not prevent the Sovereign, the Legislature, from changing the taxability of property, and the case of *Administrators of Tulane Education Fund vs. The Board of Assessors*, 38 An. 292, is cited to support this proposition. No citation was ever less fortunate. That decision holds that the owner, not the Legislature, can change the taxability of his property by changing its use.

"The Legislature," says Judge Manning, "*cannot exempt* from taxation property that is constitutionally liable to it, but an owner of property may translate it into the domain of constitutional exemption by dedicating it to a public use."

We are very much mistaken if this decision does not hold that the taxability of property cannot be changed so as to affect acquired rights.

The restricted Constitutional Convention in Louisiana had no greater power in this regard than the Legislature. In no capacity can the State invade the sanctity nor destroy the protection which the supreme law of the land guarantees to the obligations of contracts. However broad the rights of the States, the Constitution will not let them lay their hands upon vested rights, but applies to them the principle of universal equity which restrains

individuals and lawgivers alike: *Nemo potest mutare consilium suum in alterius injuriam.*

But it is agreed that the Louisiana and Arkansas Railway Company created new property, and brought new property into the parish, which never was taxable.

In the first place, this is not true as to the right of way, the depot grounds, the crossties and all the other material from bridges and construction except the steel rails and rolling-stock. It is admitted that these lands *were acquired* after the Arkansas Southern Railroad was completed and its tax earned. It is, therefore, certain that these lands had been assessed, and the timber out of which the road was constructed had been impressed with the tax debt which plaintiff in error had earned. It was in the same condition as if the taxpayers of Winn had granted and executed a legal mortgage in favor of plaintiff. It was an incumbrance of which this new road was well aware. It bought its property *cum onere*. The wisdom of the taxpayers was vindicated. As soon as the Arkansas Southern road was built, sawmills and all sorts of enterprises sprang up, and new railroads were swift to come in to enjoy the spoils of expanded trade. It is a mistake to suppose that these new roads were induced to build by the bonus of exemption from taxation. There is no evidence to support such a theory. It is more reasonable to conclude that they came to share the traffic of the wonderful long-leaf-pine section which the Arkansas Southern had opened up.

But there is another answer to the contention that this new property was not taxable because it did not exist in Winn Parish at the time the tax was voted. In the case of *Arkansas Southern Railroad Co. vs. Wilson, Tax Collector*, 118 La. 395, which involved the collection of a tax voted by the Town of Ruston, the contention was made by certain taxpayers that the tax only covered property in the town at the time it was voted. In an able decision the Supreme Court of Louisiana denied this contention, and held that the tax covered all property brought into the town, all new machinery, houses and betterments, and all increase of valuation, etc., basing its decision on the sound reason that the great inducement and consideration for building the railroad was to increase values and bring in new enterprises, and thus enjoy an increase of its tax. The principle of this decision undoubtedly made all the property of the Louisiana and Arkansas Company taxable as soon as it reached Winn Parish.

Why question this doctrine?

If the Constitutional Convention could exempt a part of the property covered by this tax, it could exempt it all.

If it could diminish, it could destroy.

The true test is: Have the rights of the railroad under its contract been curtailed?

4 Wh. 535.

Has its value been diminished?

2 H. 608; 6 H. 301.

Rights under the contract must be determined by laws in force at the date of the contract.

Fisk vs. Police Jury of Jefferson Parish, 116 U. S. 132; 96 U. S. 595; 16 Wallace, 314; *Hunt vs. Hunt*, 131 U. S.

We have not argued the question of estoppel, and some other questions involved in this case, because we apprehend that the only issue that this Court can consider is whether the exemption from taxation in Article 230 of the Constitution of 1898, as construed by the Supreme Court of Louisiana, is repugnant to the Constitution of the United States.

We submit respectfully that said exemption in Article 230 of the Louisiana Constitution, as applied to the rights of plaintiff in error, is repugnant to the obligation clause, and, therefore, null and void, and that the judgment of the Supreme Court of Louisiana should be set aside, and the judgment of the District Court should be reinstated.

ALLAN SHOLARS .
A. A. GUNBY,

Attorney for Plaintiffs in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 38.

ARKANSAS SOUTHERN RAILWAY COMPANY AND
F. L. SHAW, SHERIFF AND TAX COLLECTOR, PLAINTIFFS
IN ERROR,

vs.

LOUISIANA & ARKANSAS RAILWAY COMPANY,
RESPONDENT.

IN ERROR FROM THE SUPREME COURT OF LOUISIANA.

SUPPLEMENTAL BRIEF FOR PLAINTIFFS IN ERROR.

The strenuous effort made by respondent to show that the Supreme Court of the United States has no jurisdiction in this case impels us to add to the brief already filed. We have not thought, and can hardly yet believe, that the respondent's position on the question of jurisdiction is serious. The whole issue in the court below was based on the existence *vel non* of the Federal question whether article 230 of the

constitution of Louisiana, adopted in 1898, impaired the obligation of the contract asserted by plaintiff in error and whether said contract was protected by the constitutional provision against the passage of any law by any State which impaired the obligation of said contract.

Totally unlike the cases cited in respondent's brief, in this case the Federal question was distinctly pleaded in the answer filed by plaintiff in error in the court of the first instance. It was not only pleaded and argued in that court, but it was passed upon by the district judge, his honor Judge George Wear, who held that article 230 of the Constitution of 1898, which was adopted subsequent to the voting of the tax in favor of the Arkansas Southern Railroad, did impair that contract and was unconstitutional, null, and void for that reason. In the Supreme Court of Louisiana the question was raised and argued orally and by briefs of both parties and was expressly and distinctly passed upon by the Supreme Court of Louisiana. The Federal question was recognized by the Supreme Court of Louisiana, but it decided that question adversely to plaintiff in error, holding that the article 230 of the Louisiana constitution, exempting new railroads from all taxation, did not impair the obligation of a contract for the reason that it held there was no contractual relation between the Arkansas Southern Railroad Company and the taxpayers of Winn parish prior to the adoption of the constitution of 1898. The Louisiana Supreme Court not only passed on this question—the organ of the court admitted that the court found difficulty in deciding the Federal question involved in the case. The cases decided and relied on by the respondent to show that there is no jurisdiction in this case in the Supreme Court are cases

where the Federal question was not raised or presented in the pleadings until too late, as was held in the case of the Kansas City Power Company *vs.* Julian, 215 U. S., 589, or cases where the judgment of the lower court rested entirely on non-Federal ground, as in the cases of Cincinnati Street Railway Company *vs.* Snell, 193 U. S., 30; Hammond Packing Company *vs.* Arkansas, 212 U. S., 322; Leathe *vs.* Thomas, 207 U. S., 72. All those cases are predicated upon the fact that no constitutional question was involved which it was necessary to pass on before a judgment could be rendered in the case. It is difficult to conceive how such authorities can apply to the question of jurisdiction in this case. A great deal of stress is laid on the case of the Arkansas Southern Railroad Company *vs.* German National Bank, 207 U. S., 270, in which the Federal question first appeared in the opinion of the Supreme Court of Arkansas. That decision went off entirely on questions of fact which the Arkansas Supreme Court held to be indisputable and categorically stated, basing their conclusion entirely on the rules of common law. The plaintiff in error in that case claimed no fundamental right within the protection of the Federal Constitution, as it does in this case. In *Chambers vs. Baltimore & Ohio R. R. Company*, 207 U. S., 142, the court held that where the opinion of the highest court of the State holds that a Federal question is at issue and decides that question adversely to the party who claims its protection, and the decision of such issue was essential to the judgment rendered, the Supreme Court of the United States is not concluded by the judgment of State court and must determine for itself whether a Federal question is really involved. Even where the constitutional question is first distinctly presented on motion for rehearing, the Supreme Court took jurisdiction.

Sullivan *vs.* Texas, 207 U. S., 416. In the last case cited (207 U. S., 423) the court says:

"This court determines for itself *whether or not a contract existed* and whether an act of the legislature of a State amounts to a contract within the impairment of obligation clause of the Federal Constitution. *Muhlker vs. Harlam Co.*, 197 U. S., 571; *Kies vs. Lowery*, 199 U. S., 239; *St. Paul Gaslight Co. vs. St. Paul*, 181 U. S., 147, and *Jefferson Branch Bank*, 1 Black, 436; *McCullough vs. Virginia*, 172 U. S., 102."

As we have stated in our original brief, the serious error committed by the Supreme Court of Louisiana consisted in holding that there *was* no contract existing between the Arkansas Southern Railroad Company and the police jury of Winn parish, representing the taxpayers thereof. We cannot too strongly urge the importance in this connection of the opinion of Judge Nicholls, speaking for the Supreme Court of Louisiana, in the case of *James et al. vs. Arkansas Southern R. R. Co. et al.*, 110 La., 145. As previously stated that decision disposes of the contentions made by the Supreme Court of Louisiana in this case with reference to the contract made between the railroad company and the taxpayers. The direct issue was made in that case that the obligation that the taxpayers pay the tax was forfeited by the failure of the railroad company to construct the road to Winnfield within the time specified in the ordinance of the police jury. Judge Nicholls held that the tax was not invalidated and that the obligation of the contract was not affected by the extension of time for three months. He stated that the petition of the taxpayers did not specify a

time within which the road should be completed to Winnfield and that the law under which the election was held did not require or authorize the taxpayers to fix the time for the completion of the road, and that the fixing of the time was made by the police jury of its own motion, and that if the police jury had the authority to add to the stipulations of the law a condition that the road should be completed within a certain time, it could waive or modify that condition. Such a condition did not make the completion of the road within the time specified a condition precedent to the earning of the tax. Judge Nicholls then proceeds to hold that the contract between the taxpayers and the constructing road was made when the result of the election was ascertained and promulgated. That the voting of the tax was not a gratuity nor a bonus, but that it was an obligation, with ample cause and consideration, entered into and to be carried out by both sides. Here is a decision of the highest court of Louisiana construing act 35 of 1886 of the State of Louisiana and holding that it did create a contract between the parties thereto, that is, the taxpayers and the constructing road. In the face of such a decision how can respondent pretend that there was no contract?

If this court does not accept the construction given by the court of Louisiana of act 35 of 1886, under which the Winn parish special election was held, it may be necessary for the court to examine that act and construe it. This act prescribes the manner in which special elections shall be held in parishes, cities, and incorporated towns for the purpose of levying special taxes in aid of railway enterprises and providing for their enforcement and collection.

Section 1 provides for submitting the question of levying the tax to the taxpayers of the parish.

Section 2 provides that the petition of the taxpayers shall designate the percentage of the tax and the number of years it is to be levied, not exceeding ten.

Section 3. That the election shall be held in the same manner as provided by law for general elections and the result shall be announced and promulgated by the president of the police jury.

Section 4 provides: "That if a majority in number and in value of the property taxpayers of such parish, city, or incorporated town shall vote in favor of such levy of said special tax, then the police jury for and on behalf of such parish or the municipal authorities for and on behalf of such city or incorporated town, shall immediately pass an ordinance levying such tax and for such time as may have been specified in the petition and shall designate the year in which such taxes shall be first levied and collected."

Section 6 provides that this special tax shall be levied on all taxable property in the parish and the police jury shall have the same power to enforce and collect said special tax that may be conferred on them by law for the collection of other taxes—"which taxes from time to time, as same are collected, shall be paid to the railway company."

Section 7 authorizes the transfer and assignment of the right to the whole or any portion of said special taxes.

If this law can be construed to mean anything other than that the taxpayers enter into a contract with the constructing railroad, it would certainly be a violation of all the ordinary rules of construction. If the legislature did not provide by this act a method of binding the taxpayers of the parish, how could they have provided such method? If the petition provided for was legally signed, and if the election was legally held, and if the majority in number and value

of the taxpayers voted for the tax, what more was needed to establish an obligation on the part of the taxpayers to carry the result of that election into effect?

The Supreme Court of Louisiana fell into a similar error of confusing two entirely different things in the case of *Fisk vs. Jefferson Parish Police Jury*, 116 U. S., 133, where it held that the employment of an attorney was not a contract either in reference to his salary or as to his compensation by fees. In that case Mr. Justice Miller, speaking for the court, says:

"It seems to us that the Supreme Court confounded two very different things. * * * But after the services have been rendered under a law, resolution, or ordinance which fixes the rate of compensation, there arises an implied contract to pay for these services at that rate. This contract is a completed contract. Its obligation is perfect and rests on the remedies which the law then gives for its enforcement. The vice of the argument of the Supreme Court of Louisiana is in limiting the protecting power of the constitutional provision against impairing the obligation of contract to express contracts, to specific agreement, and in rejecting that much larger class in which one party, having delivered property, paid money, rendered services, or suffered loss at the request or for the use of another, the law completes the contract by implying obligation on the part of the latter to make compensation."

In that case the constitution of Louisiana of 1879 declared that no parish or municipal tax for all purposes shall exceed 10 mills, and this court annulled that provision and

held that the plaintiff in error was entitled to enforce the obligation of his contract under the law as it stood at the time the contract was made. This court also held in that case that it is well settled that a provision in the State constitution cannot impair the obligations of the contract and will be annulled for that reason as well as a similar provision found in an ordinary statute of the State.

In a very recent case, *Louisiana ex rel. Hubert, receiver. vs. New Orleans*, 215 U. S., 170, the Supreme Court of the United States had occasion to pass upon another decision of the Supreme Court of Louisiana in which that court again held that there was no contractual relations between the parties. That case arose from a petition for mandamus and the provision of the Federal Constitution against State legislation impairing the obligation of a contract was thoroughly examined and reviewed. Not merely the language of the Louisiana decision was considered but also its substance and effect. The reasoning of Mr. Justice Day in that case and the citations made by him are so apposite and so cogent in their application to the pending case that we need not apologize for quoting them at some length:

"A number of decisions of this court have settled the law to be that where a municipal corporation is authorized to contract and to exercise the power of local taxation to meet its contractual engagements, this power must continue until the contracts are satisfied and that it is an impairment of an obligation of the contract to destroy or lessen the means by which it can be enforced. In the case of *Wolff vs. New Orleans*, 103 U. S., 358, the subject was given full consideration and the doctrine thus summarized by Mr. Justice Fields, speaking for the court: 'It is true

that the power of taxation belongs exclusively to the legislative department and that the legislature may at any time restrict or revoke, at its pleasure, any of the powers of the municipal corporation, including, among others, that of taxation, subject, however, to this qualification, which attends all State legislation, that its action in that respect shall not conflict with the prohibition of the Constitution of the United States and, among other things, shall not operate directly on the contracts of the corporation, so as to impair their obligation by abrogating or lessening the means of their enforcement. Legislation producing this latter result, not indirectly as a consequence of legitimate measures, as will sometimes happen, but directly by operating upon these means, is prohibited by the Constitution, and must be disregarded—treated as never enacted—by all courts recognizing the Constitution as the paramount law of the land. This doctrine has been repeatedly asserted by this court when attempts have been made to limit the power of taxation of a municipal body, upon the faith of which contracts have been made and by means of which alone they could be performed. The prohibition of the Constitution against the passage of laws impairing the obligation of contracts applies to the contracts of the State and to those of its agents acting under its authority, as well as to contracts between individuals. And that obligation is impaired, in the sense of the Constitution, when the means by which a contract could be enforced at the time of its execution or rendered less efficacious by legislation operating directly upon those means.”

To the same effect is cited the opinion of Mr. Chief Justice Waite in the case of *Ralls County Court vs. United States*, 105 U. S., 733, all of which applies with signal force to the

case now under consideration and supports our theory and conclusion that plaintiff in error is entitled to the benefit of all the laws existing at the time its tax was voted. Mr. Justice Day well says in the opinion cited:

"The power of taxation conferred by law entered into the obligation of the contract and any subsequent legislation withdrawing or lessening such power, leaving the creditors without adequate means of satisfaction, impairs their obligation within the meaning of the Constitution."

These recent enunciations are but a reaffirmance in terse and impressive language of the firm principles established long ago by the immortal Marshall and his illustrious associates. If the rights of the plaintiff in error be tested on the principles of the Louisiana Civil Code, or on the well-settled jurisprudence of that State, or on the jurisprudence and Constitution of the United States, they are bound to prevail against the ingenious, but untenable, suggestions of the respondent that no obligation flowed from the agreement of the taxpayers of Winn to furnish an adequate consideration to induce and compensate the building of the first railroad into their parish. None of the taxpayers are making any complaint except the new railroads, which are enjoying the fruit of the contract made between said taxpayers and the plaintiff in error.

Respectfully submitted,

A. A. GUNBY,

Attorney for Arkansas Southern R. R. Co.





Office Supreme Court, U. S.

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IN THE
Supreme Court of the United States

OCTOBER TERM 1909.

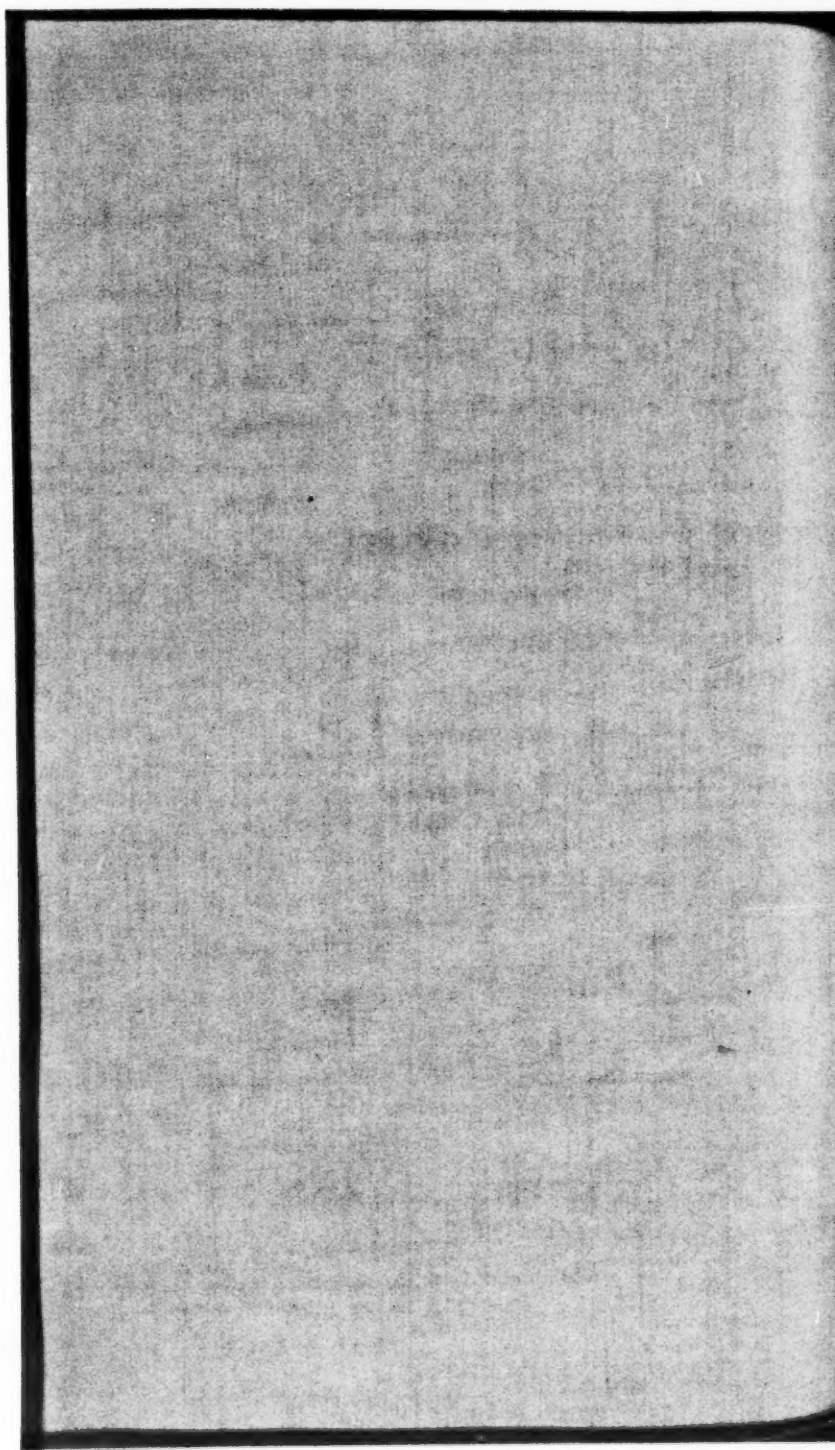
No. 138.

**ARKANSAS SOUTHERN RAILWAY COM-
PANY AND F. L. SHAW, Sheriff and Tax
Collector,Plaintiffs in Error,**
versus
**LOUISIANA & ARKANSAS RAILWAY
COMPANY,Respondent.**

In Error from the Supreme Court of Louisiana.

BRIEF AND ARGUMENT OF RESPONDENT.

HENRY MOORE,
H. H. WHITE,
HENRY MOORE, Jr.,
Attorneys for Respondent in Error.



IN THE
Supreme Court of the United States

OCTOBER TERM 1909.

No. 211.

**ARKANSAS SOUTHERN RAILWAY COM-
PANY AND F. L. SHAW, Sheriff and Tax
Collector,Plaintiffs in Error,
versus**

**LOUISIANA & ARKANSAS RAILWAY
COMPANY,Respondent.**

In Error from the Supreme Court of Louisiana.

BRIEF AND ARGUMENT OF RESPONDENT.

As set forth in brief of Plaintiffs in Error, the Louisiana & Arkansas Railway Company enjoined the attempted collection of a special five mill tax levied in favor of the Arkansas Southern Railroad Company for the years 1903, 1904, 1905 and 1906 against 26.55 miles of main track and 2.62 miles of side track belong-

ing to said Louisiana & Arkansas Railway Company, which had been commenced, built and constructed through Winn Parish, Louisiana, after the adoption of the Constitution of Louisiana for the year 1898 and prior to the 1st day of January, 1904, which said main track and side track had been advertised to be sold for the payment of said tax—claiming said railroad to be exempt from the payment of such tax by virtue of the provisions of Art. 230 of said Constitution of 1898.

The Supreme Court of Louisiana sustained the contention of the Respondent and perpetuated the injunction granted by the lower court.

The Articles of the Constitution of the State of Louisiana of 1898, Nos. 224, 225, 230, 232 and 270 referred to by the Supreme Court of Louisiana in its opinion, will be copied herein for the convenient reference of this Honorable Court; copying from the Constitution of 1898 and giving the numbers of each corresponding article in the Constitution of 1879—omitting in such copying only such matters as are entirely irrelevant to the questions at issue.

Art. 224 (202 Const. 1879.) “The taxing power may be exercised by the General Assembly for state purposes, and by parishes and municipal corporations and public boards under authority granted to them by the General Assembly for parish, municipal and local purposes, strictly public in their nature.”

Art 225 (203 Const. 1879.) “Taxation shall be equal and uniform throughout the territorial limits of the authority levying the tax, and all property shall be taxed in proportion to its value to be ascertained as

directed by law; provided the assessment of all property shall never exceed the actual cash value thereof; and provided further, that the tax payers shall have the right of testing the correctness of their assessments before the courts of justice.

In order to arrive at this equality and uniformity, the General Assembly shall, at its first session after the adoption of this Constitution, provide a system of equality and uniformity in assessments based upon the relative value of property in the different portions of the state. The valuations put upon property for the purposes of state taxation shall be taken as the proper valuations for purposes of **local taxation** in every subdivision of the state."

"Art. 230 (207 Const. 1879). The following shall be **exempt from taxation**, and no other, viz: All public property, places of religious worship, or burial, all charitable institutions, all buildings and property used exclusively for public monuments of historical collections, colleges and other school purposes, the real and personal estate of any public library, and that of any other library association used by or connected with such library, all books and philosophical apparatus, and all paintings and statuary of any company or association kept in a public hall; provided, the property so exempted be not leased for purposes of private or corporate profit or income. There shall also be exempt from taxation household property to the value of five hundred dollars. There shall also be exempt from parochial and municipal taxation for a period of ten years from the first day of January, 1900, the capital, machinery and other property employed in mining operations, and in the manufacture of textile fabrics, yarns, rope, cordage, leather, shoes, harness, saddlery, hats, clothing, flour, machinery, articles of tin, copper and sheet iron, agricultural implements and furniture and other articles of wood, marble or stone, soap, stationery, ink and paper, boat building and fertilizers and chemicals; provided, that not less than five hands are employed in any one factory; provided, that nothing herein contained shall affect the exemptions provided for by existing constitutional provisions.

There shall also be **exempt from taxation** for a period of ten years from the date of its completion any railroad or part of such railroad that may hereafter be constructed and completed prior to January 1, 1904; provided, that when aid has heretofore been voted by any parish, ward, or municipality to any railroad not yet constructed, such railroad shall not be entitled to the exemption from taxation herein established, unless it waives and relinquishes such aid or consents to a re-submission of the question of granting such aid to a vote of the property taxpayers of the parish, ward, or municipality, which has voted the same, if one-third of such property taxpayers petition for the same within six months after the adoption of the Constitution."

(The provisions of this article establish many exemptions not mentioned in Const. 1879).

"Art. 232 (209 Const. 1879). The State tax on property for all purposes whatever, including expense of government schools, levees and interest, shall not exceed, in any one year, six mills on the dollar of its assessed valuation, and except as otherwise provided in this Constitution, no parish, municipal or public board tax for all purposes whatsoever, shall exceed in any one year ten mills on the dollar of valuation; provided, that for giving additional support to public schools, and for the purpose of erecting and constructing public buildings, public school houses, bridges, wharves, levees, sewerage work and other works of permanent public improvement, the title to which shall be in the public, any parish, municipal corporation, ward or school district may levy a special tax in excess of said limitation whenever the rate of such increase and the number of years it is to be levied and the purposes for which the tax is intended, shall have been submitted to a vote of the property tax payers of such parish, municipality, ward or school district entitled to vote under the election laws of the State, and a majority of the same in numbers and in value voting at such election shall have voted therefor."

Art. 270 (242 Const. 1879). "The General Assem-

bly shall have power to enact general laws authorizing the parochial, ward and municipal authorities of the State (In Const. of 1879 Art. 242 there here appears the words, "**under certain circumstances**," which words are omitted from Art. 270 of Const. of 1898) by a vote of the majority of the property tax payers in number entitled to vote under the provisions of this Constitution and in value, to levy **special taxes** in aid of public improvements or railway enterprises; provided, that such tax shall not exceed the rate of five mills per annum, nor extend for a longer period than ten years; and provided further, that no tax payer shall be permitted to vote at such election unless he shall have been assessed in the parish, ward or municipality to be affected for property the year previous."

Neither Article 232 (209 of Const. 1879), nor Art. 270 (242 of Const. 1879) are **self-operative** or **self-acting**. The powers contemplated by the provisions of these articles cannot be exercised by the Parish, Municipal or Public Board authorities without legislative sanction and warrant—and such powers are controlled and limited by the legislative grant authorizing same. The Supreme Court of Louisiana so held in *Surget vs. Chase, Tax Collector*, 33 Ann., p. 833. The language of both Articles is that, "The General Assembly shall have power to enact general laws, etc."

The requisite legislative sanction to carry into effect Art. 232 Const. 1898 was given by Act 131, 1898 (Sec. 5), amended by Act 145 of 1904 (Sec. 3), and reading as follows:

"Be it further enacted, etc., that the Police Jury of any Parish, ward or school district, or the municipal authorities of any municipality, shall, when the vote is in favor of the levy of such **special tax**, levy and col-

lect annually, in addition to **other taxes**, such special tax, at the rate voted by the property tax payers and during the years designated, **upon all the taxable property within the limits of such Parish, municipality, ward or school district**, as the case may be, and such Police Jury and authorities and the proper tax collectors shall have the same right to enforce and collect any **special tax** that may be authorized by such election, as is or may be conferred by law upon them for the collection of other taxes, which **special taxes** so collected shall be used for the object or purpose designated in the petition and for none other, and in case of a **special tax** voted for the support of a public school, or for the purpose of erecting a public school house, the same shall, from time to time, as collected be paid to the Board of School Directors of the Parish in which said **special tax** shall be levied."

The legislative sanction to carry into effect Art. 242 of Constitution of 1879 and under which the tax in question was voted is found in Act 35, 1886, p. 44, same being passed to "make effective Art. 242, Constitution 1879." It is upon this Act counsel for Plaintiffs in Error relies for his alleged contract, and upon page 12 of his brief we find Sec. 4 of said Act copied in full. We call especial attention to the wording of Art. 242 copied above, and to Section 6 of said Act which we shall copy in extenso. The language of said Art. 242 gives the legislature discretion as to how and when and on what property the special tax may be levied.

The General Assembly having this discretion limits the tax to "**the taxable property within said parish, etc.**" Sec. 6 of said Act as amended by Act 153, 1894, is as follows:

"Sec. 6. That the police jury of any parish or the municipal authorities of any city or incorporated town, shall, when the vote is in favor of the levy of such taxes, levy and collect annually, **in addition to other taxes, a tax upon all taxable property within such parish,** ward, city or incorporated town sufficient to pay the amount specified to be paid in such petition; and such police jury and municipal authorities shall have the same power to enforce and collect **any special tax** that may be authorized by such election, as is or may be conferred by law upon them for the collection of **other taxes;** which taxes so collected shall from time to time, as the same are collected, be paid to the railway company or corporation named in such petition, or to any person, partnership or other company or corporation to which the same may have been assigned."

Counsel for Plaintiffs in Error upon page 7 of his brief insists—that although the Writ of Error was taken upon the one alleged Federal question, to-wit: That the exemption from taxation provided for in Art. 230 of the Louisiana Constitution of 1898 invoked by Respondent and sustained by the Supreme Court of Louisiana, is in conflict with the Federal Constitution because it impairs the obligations of a contract;—yet this Court will go into all the issues passed upon by the Supreme Court of Louisiana. Practically, the only other issue passed upon and decided by said Supreme Court was to the effect that when a tax under the authority granted by the Legislature of Louisiana as provided for in Art. 270 Const. of 1898 (Art. 242 Const. 1879) was voted to be levied upon all the **taxable property** within the limits of Winn Parish, such tax could not be collected upon property which the sovereign State of Louisiana had declared was **not taxable.**

Counsel for Plaintiffs in Error started out claiming that the tax in question was a **local assessment**, and, notwithstanding the fact that he has had to abandon the claim that said tax was in the nature of a local assessment, and could only be classed as Local Taxation, he continues to quote in favor of his contention the case of *Illinois Central R. R. vs. Decatur*, 147 U. S., 190, and *Ford vs. Delta & Pine Lumber Co.*, 164 U. S., 662, notwithstanding the fact that the opinion of the Supreme Court of Louisiana plainly sets forth that these were cases of **special assessments levied upon property specially benefitted**.

He now complains upon page 9 of his brief that the Supreme Court of Louisiana fell into error in construing the exemption provided for in Art. 230 of the Constitution of 1898 to extend to **Local Taxation**, described by Justice Watkins in *Munson vs. Board of Commissioners*, 43 La. Ann., in contradistinction from a local assessment, as "a tax for the local purposes of a particular district of country imposed on the persons domiciled or property therein situated, as distinguished from other parts of the state"—which is the same character of taxation that this Honorable Court in *Illinois Central R. R. vs. Decatur*, *supra*, describes as a tax for "the promotion of those various schemes which have for their object the welfare of all."

The Supreme Court of Louisiana in its opinion upon these points followed a uniform line of decisions of its predecessors extending back for more than fifty years.

See, City of LaFayette vs. Orphan Asylum, 4 Ann.,

1.

Rooney vs. Brown, 21 Ann. 57.

LeFrance vs. City of New Orleans, 27 Ann. 188.

Board of Levee Commissioners vs. Lorie Bros., 33
Ann. 276.

Surget vs. Chase, Tax Coll., 33 Ann. 833.

City of N. O. vs. Carondelet, etc., 36 Ann., 396.

Charnock vs. Levee Comm'rs, 38 Ann., 323-6.

Planting Co. vs. Tax Collector, 39 Ann. 455.

Munson vs. Board of Comm'rs, 43 Ann., 15, and pp.
26-30.

Citizens & Taxpayers vs. Williams, 49 Ann., 422.

Fullilove vs. Police Jury, 51 Ann., 359.

M. K. & T. Trust Co. vs. Assessor, 51 Ann., 416.

R. R. Co. vs. State Board of Appraisers, 52 Ann.,
1931.

Hughes vs. Board of Comm'rs, 108 Ann., 146.

Construction Co. vs. Tax Collector, 108 Ann., 437.

United Railway & Trading Co. vs. Meyers, Sheriff,
112 Ann., 897.

L. & N. W. K. Co. vs. State Board of Appraisers,
120 La., 471.

And see also the very recent case of L. R. & N. Co.
vs. Madere, Sheriff, Sou. Rept., Dec. 25, 1909, Vol. 50,
p. 609.

We take it as too well settled to be seriously con-
troverted, that the decision of the Court of last resort

of any state construing the statutes, or Constitution of such state, is binding upon this court, and we deem it improper to burden the court with a discussion of the various issues, outside of the alleged Federal question, that may have been passed upon by the Supreme Court of Louisiana and decided in favor of the defendant in error.

See Note "**b, Statutory Construction,**" Missouri, ex rel. Hill vs. Dockery, Sup. Court of U. S., 191 U. S., 165, p. 575, Book 63, Lawyers Repts. Annotated.

The learned counsel for plaintiffs in error in his assignment of errors, and in his argument in printed brief seems to take for granted as a fact that the Supreme Court of Louisiana in the decision of this case decided a question involving a construction of Sec. 10 Art. 1, of the Constitution of the United States and that such decision was necessary to sustain the opinion rendered by the said Court.

Special attention is called to said opinion on pp. 24 to 29, Transcript of Record, and we confidently assert that a careful perusal of same will convince this court that no question arising under the Constitution of the United States was necessarily involved in such decision and that the decision does not pass on any question involving the impairment of the obligation of contracts that would arise under Art. 1, Sec. 10 of the Constitution of the United States.

The plaintiffs in error in their pleadings and in their brief and argument before the court of last resort in Louisiana attempted to raise the question that a contract existed between the taxpayers of Winn Parish and the Arkansas Southern Railroad Co. and thereby tried to get before the court the question that under such contract the taxes levied against the Louisiana & Arkansas Railway Company had become vested in the Arkansas Southern Railroad Co. and contended that this contract would be impaired by a decision of the Supreme Court of Louisiana sustaining the injunction against the collection of such taxes.

The Louisiana Supreme Court did not find it necessary to decide this constitutional question, but found as a fact that the Arkansas Southern Railroad Co. had a tax voted it in Winn Parish in February of 1898; that on May 12th, 1898, the Constitution of the State of Louisiana for the year 1898 was adopted; that under Art. 230 of said Constitution of 1898, all railroads and parts of railroads built within the State after the adoption of said Constitution and prior to the first day of January, 1904, were exempt from taxation, except those to whom aid had been voted, and that roads desiring such exemption from taxes were required to file a waiver of the aid voted; and that the Arkansas Southern Railroad Co. instead of filing a waiver of the aid voted did on the 5th day of November, 1898, file its waiver of exemption from taxes.

The court further found as a fact that the Arkansas Southern Railroad Co. was not completed on or before the 7th day of February, 1901, in accordance with the terms of the tax voted, but by some "proceeding and judgment of the Police Jury of Winn Parish," which was not explained, said railroad was given an extension of time to the first day of May, 1901, thus deciding the question at issue squarely upon the fact that the contract (if any existed between said taxpayers and the defendant Railroad Company) did not come into existence until after the adoption of the Constitution of 1898, which Constitution contained the exemption from taxation claimed by the plaintiff railroad company—and under such finding of facts, the decision did not turn on the construction of any question arising under the Constitution or statutes of the United States, but on matters of fact as above found by the Louisiana Supreme Court. Below we quote two paragraphs from their decision, which, it seems to us, gives the true gist of this matter:

"When the Constitution was adopted in May, 1898, aid had been voted to the predecessors of the defendant railroad, on a certain condition. It appears from the statement of facts that this condition was not complied with, but in some way not explained, the railroad procured a modification of the contract as to the time of completion. It cannot, therefore, be said that the defendant railroad acquired all of its contract rights prior to the adoption of the Constitution of 1898."

"The right of the defendant railroad to a tax levy

did not become vested until the year 1901—three years after the adoption of the Constitution of 1898.” Page 28 of Transcript of Record.

The Supreme Court of the United States will not take jurisdiction and cannot review the judgment of a State court in the absence of a federal question.

Murdock vs. Memphis, 87 U. S. 590.

New Orleans Water Works Co. vs. Sugar Refining Co., 125 U. S. 18.

Davis vs. Texas, 139 U. S. 651.

Leathe vs. Thomas, 207 U. S. 93.

Arkansas Southern R. R. Co. vs. German Nat'l Bank, 207 U. S. 270.

Other citations almost without number could be made sustaining this proposition, but it is one so well settled, that it would be useless to present other authorities.

Even where a Federal question is raised by the pleadings and such question is decided by the Supreme Court of a State, this court has no jurisdiction to review such judgment, unless the opinion given by the State court as to the Federal question was necessary to sustain its decision.

In the case of New Orleans Water Works Co. vs. Louisiana Sugar Refining Co., *supra*, this matter was gone into very fully and the previous decisions of this court upon this point thoroughly reviewed and there the following rule was laid down which has since been

strictly adhered to by this court in deciding questions as to jurisdiction:

“The result of the authorities, applying to cases of contracts the settled rules, that in order to give this court jurisdiction of a writ of error to a state court, a federal question must have been, expressly or in effect, decided by that court, and therefore, that when the record shows that a federal question and another question were presented to that court and its decision turned on the other question only, this court has no jurisdiction, may be summed up as follows: When the state court decides against a right claimed under a contract, and there was no law subsequent to the contract, this court clearly has no jurisdiction. When the existence and the construction of a contract are undisputed, and the state court upholds a subsequent law, on the ground that it did not impair the obligation of the admitted contract, it is equally clear that this court has jurisdiction. When the state court holds that there was a contract conferring certain rights, and that a subsequent law did not impair those rights, this court has jurisdiction to consider the true construction of the supposed contract, and if it is of opinion that it did not confer the rights affirmed by the state court, and therefore its obligation was not impaired by the subsequent law, it may on that ground affirm the judgment. So, when the state court upholds the subsequent law, on the ground that the contract did not confer the right claimed, this court may inquire whether the supposed contract did give the right, because, if it did, the subsequent law cannot be upheld. But when the state court gives no effect to the subsequent law, but decides, on grounds independent of the law, that the right claimed was not conferred by the contract, the case stands just as if the subsequent law had not been passed, and this court has no jurisdiction.”

In *Dugger vs. Bocoek*, 14 Otto 596, referring to the question of jurisdiction, occurs the following paragraph:

“The rule in relation to our jurisdiction is that it must either appear from the record in express terms that there has been a decision against the right claimed under the Constitution, laws or treaties of the United States, or that the judgment or decree complained of could not have been given without so deciding.” Citing *Murray vs. Charleston*, 96 U. S. 442.

In *DeSaussure vs. Garland*, 127 U. S. 216, this court held:

“Where a state court bases its judgment, not on a law raising a federal question, but on an independent ground, this court will not take jurisdiction of the case, even though it might think the position of the state court an unsound one.”

In the above case occurs the following paragraph, which appears particularly pertinent in the instant case:

“And it has been repeatedly decided under Sec. 709 of the Revised Statutes that to give this court jurisdiction of a writ of error to state court, it must appear affirmatively, not only that a federal question was presented for decision to the highest court of the state having jurisdiction, but that its decision was necessary to the determination of the cause, and that it was actually decided, or that the judgment as rendered could not have been given without deciding it.” Citing as authority *Brown vs. Atwell*, 92 U. S. 327. *Citizens Bank vs. Board of Liquidation*, 98 U. S. 140. *Adams Co. vs. Burlington & M. R. R. Co.*, 112 U. S. 123, and *Detroit City R. Co. vs. Guthard*, 114 U. S. 133.

In the *City and County of San Francisco vs. Itsell*, 133 U. S. 65, Mr. Justice Gray, citing the cases above referred to, again held that this court had no jurisdiction to review the judgment of the highest court of a

state, unless a federal question has been, either in express terms, or by necessary effect, decided by that court against the plaintiff in error.

In *Wood Mowing Machine Co. vs. Skinner*, 139 U. S. 293, this court held:

“It does not appear upon what ground the Court of Appeals proceeded in affirming this judgment, but as the case might have been properly determined upon ground broad enough to support the judgment without resort to a federal question, this court has no jurisdiction.”

Citing as supporting such opinion *Baupre vs. Noise*, 138 U. S. 397, and *Johnson vs. Risk*, 137 U. S. 300.

In *Johnson vs. Risk*, this court held:

“The plaintiff in error, if he wished to claim that this cause was disposed of by the decision of a federal question, should have obtained the certificate of the Supreme Court to that effect, or the assertion in the judgment that such was the fact.”

In *Hammond vs. Johnson*, 142 U. S., p. 73, this court held:

“It is well settled that where the Supreme Court of a state decides a federal question in rendering a judgment, and also decides against the plaintiff in error upon an independent ground not involving a federal question and broad enough to maintain the judgment, the writ of error will be dismissed without considering the federal question.”

The City of New Orleans vs. New Orleans Water Works Co., 142 U. S. 79, and *Delaware, etc., Nav. Co. vs. Ribald*, 142 U. S. 636, support fully the last quoted citation.

In the State of Connecticut vs. Woodruff, 153 U. S. 689, without giving an opinion, the Chief Justice sustained a motion to dismiss where the record showed that the case was decided in the state court on grounds broad enough in themselves to support the judgment without reference to the federal question, citing a number of cases mentioned above.

“The erroneous decision of a federal question by a state court will not give jurisdiction to the Supreme Court of the United States if questions of fact adequate to determine the controversy and broad enough to maintain the judgment independent of any federal question were decided.” Eagan vs. Hart, 165 U. S. 188.

Rector vs. Ashley, 73 U. S. 142.

Klinger vs. Missouri, 80 U. S. 257.

Steins vs. Franklin Co., 81 U. S. 15.

The holding of this court has always been consistent with the cases hertofore cited yet this question was raised again in several cases decided during the October term 1907, when the court again adhered to its former ruling and dismissed for want of jurisdiction, the writs of error where the record showed a complete and adequate ground for the decision rendered other than the federal question raised, and the court refused to inquire into the fact whether the decision upon such ground was or was not correct, and thus refused to take jurisdiction to investigate the federal question attempted to be brought before it. Leathe vs. Thomas, 207 U. S. 93.

In *Arkansas Southern R. R. Co. vs. German National Bank*, 207 U. S. 270, this court held as follows:

“When we see that the opinion of the court upon the constitutional question first appearing in that opinion was not necessary to its judgment upon the case, we have nothing more to do.”

See also *Vandalia R. R. Co. vs. State of Indiana, ex rel., City of South Bend*, 207 U. S. 359. *Stickney vs. Kelsey*, 209 U. S. 419. In this last case where it appeared from the opinion that the language of the state court might be interpreted as a declination to pass upon a federal question not necessary to the decision, the Supreme Court of the United States, since the action of the state court was ambiguous, declared it would resolve the ambiguity against the parties complaining who were bound to show clearly that a federal right was impaired, and held it would not use its ingenuity in trying to find a federal question in order that it might take jurisdiction.

In cases involving the legality of any tax, toll or impost, the Supreme Court of Louisiana under Article 81 of the Constitution of 1879 and under Article 85 of the Constitution adopted May 12, 1898, is given appellate jurisdiction of both the law and facts. The finding of facts of the Supreme Court of Louisiana is final and will not be reviewed by this court. *Quinby vs. Boyd*, 128 U. S. 488. *Cornell University vs. Fiske*, 136 U. S. 152. *Dower vs. Richards*, 151 U. S. 658.

In *Sanford vs. Sanford*, 139 U. S. 642, a cause ap-

pealed from the Oregon Supreme Court, in which state, just as in the State of Louisiana, the findings of fact in equity cases of said court are as conclusive as similar findings in a case at law, this court, speaking through Field, Justice, held:

“They (findings of fact) must, therefore, be taken as correct in the disposition of the question before us, they not having been set aside or qualified by any subsequent action of the court below.”

The Supreme Court of Louisiana found as a fact the following:

“The right of the defendant railroad to a tax levy did not become vested until the year 1901, three years after the adoption of the Constitution of 1898.” Transcript of Record, p. 28.

The exemption from taxation of the respondent, Louisiana & Arkansas Railway Company, is claimed under the Constitution of 1898 adopted three years prior to the date the Supreme Court of Louisiana found the tax levy of the plaintiff in error became vested, and no law or statute of Louisiana passed subsequent to 1898 is brought into this record or involved in this decision.

This court has held “When the state court decided against a right claimed under a contract, and there was no law subsequent to the contract, this court clearly has no jurisdiction.” *New Orleans Water Works Co. vs. Louisiana Sugar Refining Co.*, supra, 125 U. S. 18.

In *Lehigh Water Co. vs. Corporation of the Borough of Easton, et al*, 121 U. S. 388, in referring to that

section of the Constitution that no state shall pass any law impairing the obligation of contracts, the court held:

“Obviously, this cause cannot be invoked for the reversal of the judgment below. It is equally clear that the law of the state to which the Constitution refers in this clause must be one enacted after the making of the contract, the obligation of which is claimed to be impaired.”

In the same case, this court further held as follows:

“The argument in behalf of the company seems to rest upon the general idea that this court, under the statutes defining its appellate jurisdiction, may re-examine the judgment of the state court in every case involving the enforcement of contracts. But this view is unsound. The state court may erroneously determine questions arising under a contract which constitutes the basis of the suit before it; it may hold a contract void which in our opinion is valid; it may adjudge a contract to be valid which in our opinion is void, or its interpretation of the contract may in our opinion be radically wrong; but in neither of such cases would the judgment be reviewable by this court under the clause of the constitution protecting the obligation of contracts against impairment by state legislation, and under the existing statutes defining and regulating its jurisdiction, unless that judgment, in terms or by its necessary operation, gives effect to some provision of the State Constitution, or some legislative enactment of the State, which is claimed by the unsuccessful party to impair the obligation of the particular contract in question.”

We contend before this court can assume jurisdiction, the decision of the state court must show squarely that a question arising under the Constitution or statutes of the United States was involved and that the

decision of the state court could not have been made without deciding the federal question thus raised, and we claim that a careful perusal of the opinion of the Supreme Court of Louisiana delivered in this cause shows clearly that it was not necessary to decide the federal question raised by the pleadings, and that said court did not attempt to decide such federal question; and therefore, this court is without jurisdiction to review the case and the writ of error must be dismissed.

Even if it should be granted that the Plaintiff in Error—the Arkansas Southern Ry. Co.—accepted the offer of the tax payers of Winn Parish according to its terms, and if it had earned said tax by the completion of its road on or by Feb. 7, 1901, so that it might be held that a binding contract between said parties had been entered into on the day the tax was promulgated, Feb. 7, 1898, yet, according to the very terms of said contract, the property of the respondent railroad would not be subject to said tax and the Supreme Court of Louisiana so held.

Under Sec. 6 of Art. 35 of 1886 of the State of Louisiana, under which the tax to said Plaintiff in Error was voted, such tax could be levied only upon **all taxable property within the Parish**. There was no property of the respondent railroad in Winn Parish at that time, and all property now belonging to it within the Parish has been brought into existence since the year 1901. Said respondent railroad accepted the offer

under the exemption clause of Art. 230 of the Constitution of 1898, and as expressed by the Supreme Court of Louisiana in its opinion in this case "the plaintiff railroad came into existence under shelter of the constitutional exemption and is not and never has been taxable property in the Parish of Winn."

The decisions of the State of Louisiana have been liberal in construing and interpreting exemption clauses under the Constitution and statutes of said state. In *LeFranc vs. City of New Orleans*, 27 Ann. 188, the court uses the following language:

"We think an exemption from taxation of property used for certain purposes expressly granted in the Constitution or in a law specially authorized by the Constitution means an exemption from all taxations, municipal as well as State; that when the people, speaking through the Constitutional Convention and through the legislature, declare that all property actually used for church, school or charitable purposes shall be exempt from taxation, they mean a complete, not a partial, exemption from the burden of taxation; also that this limitation shall apply to the power of taxation previously delegated to the municipal corporations of the state. Therefore, we conclude that the school house of the plaintiffs was not liable to the taxes of 1869 assessed by the City of New Orleans."

In *City of New Orleans vs. Carondelet Canal Co.*, 36 Ann. 396, Chief Justice Bermudez in delivering the opinion of the court says:

"The exemption is unlimited, unqualified. It therefore extends to all taxation, whether State or municipal. The reason for which the exemption was accorded by the State, is equally strong in favor of a similar exemption from municipal taxation. When the sovereign emancipates, he does so munificently."

The language of the Legislature referred to by C.

J. Bermudez reads as follows: "That said canal and railroad shall be exempt from taxation during the period of fifty years."

To bring the respondent into the Parish of Winn under the exemption clause hereinbefore referred to and then to allow this clause of the Constitution to be nullified under the guise of special taxation, would, in effect, be allowing the State of Louisiana to perpetuate a fraud against this respondent, and this, by its decisions, the State has refused to do.

A case decided by this court very much in point is that of *McGee vs. Mathews*, 71 U. S., 14 Wall 143, in which the court held that where swamp and overflowed lands were exempted from taxation as an inducement to parties to reclaim same, this exemption did not refer alone to state and county taxes, but to levee taxes as well, holding that any other construction would load the land with taxation and nullify the very purpose for which the exemption was granted.

In its decision of the case now under consideration, the Supreme Court of Louisiana passed on the construction of the statute in regard to what was **taxable property** and decided that this referred to the property in the Parish of Winn legally subject to taxation after the completion of the road, also properly holding that the question as to the taxability of property **in futuro** was necessarily left to the determination of the sovereign state. On this point, the decision followed the well settled jurisprudence of the State of Louisiana. See

Administrators of Tulane Educational Fund vs. Board of Assessors, 38 Ann. 292, where that court held:

“The character of taxability is not ineffaceably stamped on property and it may be removed by the act of its owner. Whenever he dedicates it to public use, it passes under the dominion of the exemption that is accorded to public property. Private property which is subject to taxation becomes exempt by the change that is made in its use. The Legislature cannot exempt from taxation property that is constitutionally liable to it, but an owner of property may translate it into the domain of constitutional exemption of it by dedicating it to public use.”

Also see *Tulane University of Louisiana vs. Board of Assessors*, 115 La. Ann. Repts. p. 1026, in which the court held as exempt from taxation property granted said university, even though said property had not been formally transferred to the University, but was held by the executors of the succession of the grantor.

The property of the respondent railroad company came into existence under the exemption from taxation granted in the Constitution of 1898 and at no time has it been such taxable property within the Parish of Winn as that upon which the Plaintiff in Error has earned the aid voted by the tax payers of said parish. ,

Acting under the permission granted by the law and decisions in the State of Louisiana, the railroad took an easement for right of way purposes through Winn Parish, and the owners of the road translated this into the domain of constitutional exemption by building the track of the respondent through Winn Parish.

Since the tax was voted in favor of the Plaintiff in Error, schools and churches have been built and plots of ground laid off into burial grounds in said parish, and if the theory of vested right to tax all property in the parish were the law, as claimed by opposing counsel, for the reason as stated by said counsel that the ground on which they may be situate was, prior to their erection, subject to such tax, then the Plaintiff in Error could collect taxes from all religious, charitable and eleemosynary institutions erected in Winn Parish since said tax was voted. Such a theory that property once subject to taxation must always remain so, is opposed to all the tenets of law, not only in the State of Louisiana, but of other states of this Union.

In construing a statute of a state, the decisions of its court of last resort are binding upon the United States courts, and the holding of the Supreme Court of Louisiana construing its statute as to what is or should be considered taxable property is final and said holding will be adopted by this court.

It is submitted that the decision appealed from should be affirmed, if jurisdiction could be taken by this tribunal, but because of reasons heretofore given, this court has no jurisdiction to hear the cause and the Writ of Error should be dismissed.

Amos H. H. White

HENRY MOORE,
H. H. WHITE,
HENRY MOORE, Jr.,

Attorneys for Respondent in Error.

ARKANSAS SOUTHERN RAILWAY COMPANY *v.*
LOUISIANA AND ARKANSAS RAILWAY COM-
PANY.

ERROR TO THE SUPREME COURT OF LOUISIANA.

No. 38. Argued November 4, 1910.—Decided November 28, 1910.

This court must satisfy itself whether or not the party claiming the benefit of a contract which it claims was impaired by subsequent legislation had acquired rights under the original contract and therefore has jurisdiction.

This court follows the state court in determining the extent of a special immunity from taxation granted by the constitution of the State. A subordinate body of the State, in the absence of the State distinctly limiting its control thereover, contracts subject, and not paramount, to the power of the State.

A State by authorizing a municipality to levy taxes in the future on taxable property within its jurisdiction does not thereby limit its own power to determine what property shall be taxable when the levy shall be made.

Even if the vote by a parish acting under a state statute in Louisiana to aid a railroad company by an annual tax constituted a contract and the company became entitled to its benefit, a provision in a subsequently enacted constitution exempting certain property then taxable from all taxation does not impair the obligation of the original contract and the special tax cannot be imposed on the property so exempted.

121 Louisiana, 997, affirmed.

THE facts, which involve the validity of certain taxation on property claimed to be exempt under provisions of the constitution of the State of Louisiana, are stated in the opinion.

Mr. Allan Sholars, with whom *Mr. A. A. Gunby* was on the brief, for plaintiffs in error:

This court has jurisdiction. The Federal question was properly presented. *Kansas City Power Co. v. Julian*, 215 U. S. 589; *Railway Co. v. Snell*, 193 U. S. 30; *Hammond Packing Co. v. Arkansas*, 212 U. S. 322; *Leathe v. Thomas*, 207 U. S. 72; *Southern R. R. Co. v. German National Bank*, 207 U. S. 270, do not apply, but see *Chambers v. Balt. & Ohio R. R. Co.*, 207 U. S. 142; *Sullivan v. Texas*, 207 U. S. 416.

The word "taxation" in the clause of Art. 230 of the Louisiana constitution of 1898, exempting new railroads from taxation, does not embrace special taxes voted by a parish in aid of public improvements. An exemption from taxation must be strictly construed. 42 Ann. 1098; 116 Louisiana, 144; 11 Ann. 220.

Statutes have no retrospective effect or operation unless this purpose is announced specifically in the act. 39 Ann. 115.

Voluntary contributions, though in the nature of taxes, do not constitute general or ordinary taxation in the sense in which that word is ordinarily used. 104 Louisiana, 284; see also *Ill. Cent. R. R. v. Decatur*, 147 U. S.

190; *Ford v. Delta & Pine Land Co.*, 164 U. S. 662; 108 California, 189; 91 N. Y. 574; 12 Am. & Eng. Ency. Law, Exemptions from Taxation, 314; Words and Phrases, verbo Taxation, p. 6879.

Plaintiff in error had a legal contract with the taxpayers of the parish, in consideration of which its railroad was built. That contract dated from the date on which the special election was held and the tax voted according to law. *Fletcher v. Peck*, 6 Cr. 137; *Dartmouth College Case*, 4 Wheat. 657; Civil Code of La., §§ 1761, 2028; and see *James v. The Arkansas Southern R. R. Co.*, 110 Louisiana, 145.

If it had a contract, all classes of property taxable at the time the election was held were affected by that contract, and no property in the parish of Winn, or that might come therein, could be exempt from that special tax without violating the Constitution of the United States by impairing the obligation of that contract.

As the tax was voted, the railway company had an interest in that tax; it had the right to perform certain actions, to acquire and possess that tax by doing certain things. This was clearly a vested right.

Not even the sovereign, the legislature, could change the taxability of property. *Tulane Education Fund v. Board of Assessors*, 38 Ann. 292, holds that the taxability of property cannot be changed so as to affect acquired rights. *Arkansas Southern R. R. Co. v. Wilson*, 118 Louisiana, 395, holds that the tax covered all new property brought into the town.

If the constitutional convention could exempt a part of the property covered by this tax, it could exempt it all. If it could diminish, it could destroy.

The true test is whether the rights of the railroad under its contract have been curtailed; 4 Wheat. 535; whether its value has been diminished. 2 How. 608; 6 How. 301.

Rights under the contract must be determined by laws

in force at the date of the contract. *Fish v. Police Jury of Jefferson Parish*, 116 U. S. 132; and see 96 U. S. 595; 16 Wall. 314; *Hunt v. Hunt*, 131 U. S. Appx. clxv.

Mr. Henry Moore, Jr., with whom *Mr. Henry Moore, Mr. H. H. White* and *Mr. Samuel Herrick* were on the brief, for defendant in error:

The exemption from taxation of the respondent is claimed under the constitution of 1898, adopted three years prior to the date the Supreme Court of Louisiana found the tax levy of the plaintiff in error became vested, and no law or statute of Louisiana passed subsequent to 1898 is brought into this record or involved in this decision.

When the state court decides against a right claimed under a contract, and there was no law subsequent to the contract, this court clearly has no jurisdiction. *New Orleans Water Co. v. Easton*, 121 U. S. 388.

Before this court can assume jurisdiction, the decision of the state court must show squarely that a question arising under the Constitution or statutes of the United States was involved and that the decision of the state court could not have been made without deciding the Federal question thus raised, which cannot be shown in this case.

Even if it should be granted that plaintiff in error accepted the offer of the taxpayers of Winn Parish according to its terms, and had earned the said tax by completion within the time limit, yet, according to the very terms of the said contract, the property of the respondent railroad would not be subject to said tax and the Supreme Court of Louisiana so held.

Under § 6 of Art. 35 of 1886, under which the tax to the plaintiff in error was voted, such tax could be levied only upon all taxable property within the parish. There was no property of the respondent railroad in Winn Par-

ish at that time, and all property now belonging to it within the parish has been brought into existence since the year 1901. Said respondent railroad accepted the offer under the exemption clause of Art. 230 of the constitution of 1898. *LeFranc v. New Orleans*, 27 Ann. 188; *New Orleans v. Carondelet Canal Co.*, 36 Ann. 396.

To allow this clause of the constitution to be nullified under the guise of special taxation, would, in effect, be allowing the State of Louisiana to perpetuate a fraud against this respondent, and this, by its decisions, the State has refused to do. *McGee v. Mathis*, 4 Wall. 143.

The question as to the taxability of property *in futuro* was necessarily left to the determination of the sovereign State. On this point, the decision of the State followed the well-settled jurisprudence of the State. *Tulane Educational Fund v. Board of Assessors*, 38 Ann. 292; *Tulane University v. Board of Assessors*, 115 La. Ann. 1026. The latter held property exempt from taxation even though it had not then been formally transferred to the University.

The property of the respondent railroad company came into existence under the exemption from taxation granted in the constitution of 1898 and at no time has it been such taxable property within the parish of Winn as that upon which the plaintiff in error has earned the aid voted by the taxpayers of said parish. The theory that property once subject to taxation must always remain so, is opposed to all the tenets of law, not only in the State of Louisiana, but in other States of this Union.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a writ of error to reverse a decision of the Supreme Court of Louisiana granting an injunction to the plaintiff, the Louisiana and Arkansas Railway Company, the defendant in error, against the collection from it of

a special tax in favor of the Arkansas Southern Railway Company, the plaintiff in error. 121 Louisiana, 997. The agreed facts are these. By Art. 230 of the state constitution of 1898 any railroad thereafter constructed before January 1, 1904, was to be exempt from taxation for ten years from completion, upon certain conditions. The plaintiff built its road through the parish of Winn and gained the right to the exemption. The defendant, plaintiff in error, claims its rights under a vote of the same parish on February 1, 1898, granting a tax of five mills to a predecessor to whose rights the defendant has succeeded. This vote was valid, and effective against all taxable property in the parish. *James v. Arkansas Southern Railway Co.*, 110 Louisiana, 145. Act 35, § 6, 1886. Const. 1879, Art. 242. By its terms the grant was for ten years from the completion of the road, the Police Jury adding a condition that the railroad should be completed into Winnfield within three years from the date of the vote. Afterwards the Police Jury extended the time to May 1, 1901, on or before which date and before the acquisition of its right of way and ground by the plaintiff the road was finished. It was accepted by the Police Jury and taxes have been levied and paid in accordance with the vote, beginning with the year 1901. The defendant was proceeding to levy on the property of the plaintiff in the parish and says that if the constitution of 1898 is construed to confer an exemption from this tax upon the plaintiff it impairs the obligation of contracts; contrary to Art. I, § 10, of the Constitution of the United States.

The plaintiff says that there is no constitutional question before this court because the Supreme Court of Louisiana put its decision partly upon the ground that the defendant had not acquired all of its contract rights before the adoption of the constitution of 1898. Of course this court must satisfy itself upon that point and therefore has jurisdiction. *Sullivan v. Texas*, 207 U. S. 416,

423. On the other hand the defendant asks us to review the construction given to the state constitution as extending the immunity granted by the above-mentioned Art. 230 to special taxes like this. Upon that point, equally of course, we follow the state court. *Louisville & Nashville R. R. Co. v. Kentucky*, 183 U. S. 503, 508; *Missouri v. Dockery*, 191 U. S. 165, 171. Leaving these preliminaries behind we come to the point of the case.

We shall not consider whether the vote is to be regarded as having been simply an offer at the time of its passage in consideration of acts to be done thereafter, and as having become a contract only when the road was finished, that is to say, after the constitution of 1898 went into effect. See *Wadsworth v. Supervisors*, 102 U. S. 534, 538, 539. We shall assume, without deciding, that it became binding at once, by statutory authority, after the analogy of a covenant, see *Wisconsin & Michigan Ry. Co. v. Powers*, 191 U. S. 379, 386, although liable to be defeated by the non-performance of the condition attached. We assume also that the condition was satisfied and the right to the tax earned, and that when earned it had the same validity and force as if it had been gained before the constitution was adopted. It appears further from what we have stated that when the right to the tax accrued the land now in the hands of the plaintiff's road was liable to taxation. But these facts and assumptions are not enough to make out the defendant's case.

No doubt a State might limit its control over the power of a municipal body to tax by authorizing it to make contracts on the faith of its existing powers, *Wolff v. New Orleans*, 103 U. S. 358, *Hubert v. New Orleans*, 215 U. S. 170, although unless it did limit itself with a certain distinctness of implication a subordinate body would contract subject, not paramount, to the power of the State. *Manigault v. Springs*, 199 U. S. 473, 480; *Knoxville Water*

Co. v. Knoxville, 189 U. S. 434, 438. But there is no such limitation by the State and no contract by the parish that implies it. An authority given by the State to promise and levy a tax in future years on the taxable property in the parish does not purport to limit the power of the State to say what property shall be taxable when the time comes—at least by general regulations not aimed at aiding an evasion of the promise it has allowed. A vote by a parish to pay five mills on all the taxable property within its boundaries refers on its face to a determination by the sovereign as to what that property shall be. See *Arkansas Southern R. R. Co. v. Wilson*, 118 Louisiana, 395, 401. The notion that the statute and the vote separately or together precluded the State from erecting a jail that should be free from such claims is untenable on its face. The same reasoning allows the State to go farther, as it has done. We agree with the Supreme Court that it did not transgress the Constitution of the United States.

Decree affirmed.
